

REPORTER'S RECORD

VOLUME 2 OF 21 VOLUME(S)

TRIAL COURT CAUSE NO. 1376988P

COURT OF APPEALS CASE NO. 02-14-00412-CR

FILED IN
2nd COURT OF APPEALS
FORT WORTH, TEXAS
3/27/2015 12:36:05 PM
DEBRA SPISAK
Clerk

THE STATE OF TEXAS

) IN THE 372ND JUDICIAL

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)

)

VS.

) DISTRICT COURT

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THOMAS OLIVAS

) TARRANT COUNTY, TEXAS

PRETRIAL HEARING

On the 29th day of January, 2014, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Scott Wisch, Presiding Judge, held in Fort Worth, Tarrant County, Texas;

Proceedings reported by computerized machine shorthand with assisted realtime transcription.

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Official Court Reporter
372nd Judicial District Court
Tarrant County, Texas

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EXHIBITS

STATE'S PRETRIAL					
<u>NO.</u>	<u>DESCRIPTION</u>		<u>OFFERED</u>	<u>ADMITTED</u>	<u>VOL.</u>
* 1	Video Disc (Tarrant-1376698R-RR-SXPT1.mp4)		12	12	2
* 1A	Transcript to SX PT 1		13	13	2
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* 9	Consent to Search		35	36	2
* 10	Xerox Photograph		42	43	2
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DEFENDANT'S PRETRIAL

7	<u>NO.</u>	<u>DESCRIPTION</u>	<u>OFFERED</u>	<u>ADMITTED</u>	<u>VOL.</u>
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10 (*) Denotes an exhibit designated for the record only.

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P R O C E E D I N G S

Wednesday, January 29, 2014 10:10 a.m.

(OPEN COURT, DEFENDANT PRESENT)

THE COURT: Prior to proceeding in what's technically 1352014R, originally indicted as 1298688D, both styled State of Texas versus Thomas Olivas, documents have been prepared, served, request for notice made, actual response to request for notice given, a lot of legal paperwork was properly filed in the original cause number, the 688D, last three digits. The case was reindicted, and the 014R, which is the case that will actually be tried, has some additional motions, legal documents, subpoenas. And I told the parties, the clerk of the court, everyone understands, that if these cases involve an appeal of any legal issues by either side, that the record of both cause numbers shall be incorporated and forwarded upon proper request and be made part of the record, instead of kill trees and simply redundantly refile, reserve subpoenas, reissue notices. And the parties are all in agreement with that procedure and in fact requested it.

Is that accurate, State?

MR. ROUSSEAU: Yes, Your Honor.

THE COURT: Defense?

MS. KEENE: It is, Judge.

1 THE COURT: All right. Secondly, we're here
2 for a motion to suppress in the 1352014R number, but
3 there are two motions filed in the original 688D number
4 of which one will be incorporated for purposes of our
5 pretrial hearing, the other has been superseded by the
6 new motion in the new cause number.

7 There is a motion to suppress evidence.
8 It's just styled Motion to Suppress. It's file-marked
9 November the 4th of 2013. And it addresses evidence
10 seized, physical evidence or photographs taken. That
11 motion -- there's a new motion to suppress evidence
12 that's filed that addresses that issue in the new cause
13 number.

14 And I understand the Defense believes that
15 motion to be superseded by their new motion in the new
16 cause number. Is that correct?

17 MS. KEENE: That's true, Judge.

18 THE COURT: And there's another motion filed
19 in the original cause number called Motion to Suppress
20 Statements, and I've been advised that motion is also
21 partially covered by a new superseding motion, but for
22 purposes of law, the Defense wants the Court to consider
23 and the State to be on notice that in addition to the
24 grounds in the new motion, they're also serving the
25 state statutory and constitutional grounds to suppress

1 statements that are alleged of the original motion but
2 aren't set out in the motion but factually the issues
3 will be addressed in the new motion.

4 Is that accurate? Does the new motion cover
5 the issues and there's just some law that you've
6 asserted in the prior motion that's not in the new
7 motion and you want that incorporated?

8 Let's take a break.

9 (Discussion off the record)

10 THE COURT: On the record.

11 We're hearing one motion to suppress for
12 purposes of a hearing that addresses evidence and
13 statements purportedly made by the Defendant under
14 various circumstances, but in addition to the law cited
15 in writing, any law either side wants to argue and bring
16 to the Court's attention of course is fair game, and
17 you're specifically wanting to incorporate the state
18 statutory and constitutional grounds to suppress the
19 statements that are in your original motion that somehow
20 the computer left out of your amended motion?

21 MS. KEENE: Correct.

22 THE COURT: All right. And the State
23 understands that and is prepared to deal with that?

24 MR. ROUSSEAU: Yes, Your Honor.

25 THE COURT: All right. Then I'm going to

1 close the original file and will allow the parties to
2 argue why the state constitution and statutes either
3 support or detract from the legality of any statements,
4 and I'll consider any law. And, plus, in all fairness
5 to the good lawyers who represent both sides in this
6 case, there's no rule that says you can't bring up any
7 applicable law at any time as a matter of argument. But
8 the facts of the original motions in the original case
9 are addressed by the new motion only, and so I'll only
10 hear the motion in the new cause number and decide all
11 the issues that are plead that deal with evidence and
12 statements.

13 All right. Anything for the record either
14 side needs to cover before we proceed with the motion to
15 suppress?

16 MS. KEENE: No, sir.

17 MR. ROUSSEAU: No, sir.

18 THE COURT: And, I guess, for the record,
19 there's a second motion to suppress styled First Amended
20 Motion to Suppress that deals with issues that don't
21 involve the testimony and issues raised by the original
22 motion and those will be dealt with once the first
23 motion is clear.

24 MR. ROUSSEAU: Yes, Your Honor.

25 THE COURT: All right. Then...

1 MR. ROUSSEAU: First of all, Your Honor,
2 just for clarification, just so we're clear, I delivered
3 to you yesterday three discs accompanied by three
4 transcripts that -- well, anyway, three transcripts.
5 The first two discs and the first few transcripts all
6 come from an interview done on March 21st, 2011 at
7 Grapevine Police Department which would be the day
8 following -- the morning -- the day following the
9 offense. And have you had a chance to review all of
10 those?

11 THE COURT: Actually --

12 MR. ROUSSEAU: I'm sorry. State's Pretrial
13 Exhibit 1 and State's Pretrial Exhibit 2.

14 THE COURT: Actually, that's -- you hadn't
15 said that, but you've clarified that.

16 At the request of the parties I was provided
17 three sets of documents and three DVDs, digital video
18 discs, all purporting to show an interview of the person
19 I now recognize in court as the same person on the face
20 of those interviews, and, actually, I'm seeing ready-to-
21 be-sworn other people who might have appeared on those
22 interviews, and they're marked State's Pretrial
23 Exhibit 1 and that one is also labeled "Interview Part
24 One, 3/21/11," March 21st, 2011. State's Pretrial
25 Exhibit 2 is marked and it says "Interview Part Two,

1 3/21/2011". Attached to each disc, or vice versa, was
2 what appears to be a transcription of the interview,
3 "part one" labeled in the upper right-hand corner of the
4 first page that corresponds to State's Pretrial
5 Exhibit 1, which is a 44-page document. "Part two" is
6 labeled in black ink in the upper right-hand corner.
7 It's a 43-page document. And there's a third disc --
8 might as well put this in the record now -- labeled
9 State's Pretrial Exhibit 3. It's described on the face
10 of the DVD in Sharpie as "arrest interview" or maybe
11 "post-arrest interview, 9/24/12," and there is a
12 transcription of that interview that doesn't have "part
13 one" or "part two" on it, but in the upper left-hand
14 corner says "Olivas, Thomas," cause number and
15 "Interview 9/24/2012, Officer BP Stewart," and it is a
16 46-page document.

17 With a laptop computer and Apple iPhone
18 earplugs, I watched, listened to and simultaneously
19 reviewed on the transcript each and every one of these
20 DVDs from what my opinion was pretty close to six hours
21 with intermittent breaks. And, in all fairness, I tried
22 to do it yesterday earlier and with all the other court
23 business and interruptions, I just gave it up and stayed
24 here until 9:00 o'clock last night, almost, to get it
25 done.

1 I have made minor notes on the face of the
2 transcripts to keep up with what's going on and an
3 occasional highlight, and some of that was done just to
4 make sure I would keep up with the transcript and I'm
5 not losing pages. So no one should put any major
6 significance into what I wrote. But I did write at the
7 top of one "OJ in cuffs," so for reference, if I had to
8 stop and start, means orange jumpsuit and was cuffed at
9 the beginning of the tape, which refers to the 9/24
10 interview.

11 But if you want to offer for purposes of the
12 record at this time of this hearing State's Pretrial
13 Exhibits 1, 2 and 3, the DVDs, if there's no
14 authenticity issues, since everyone approved me looking
15 at them in advance, you can get that out of the way and
16 then you can just identify them.

17 MR. ROUSSEAU: I would like to offer them
18 for purposes of this hearing, Your Honor.

19 THE COURT: All right. Is there any
20 objection to State's Pretrial 1, State's Pretrial 2 or
21 State's Pretrial 3 for purposes of this hearing?

22 MS. KEENE: No, sir.

23 THE COURT: All right. Then each of the
24 DVDs as so identified is admitted into evidence.

25 (State's Pretrial Exhibit No. 1-3 admitted)

1 THE COURT: Off the record.

2 (Discussion off the record)

3 THE COURT: On the record.

4 The transcript that is labeled "part one" in
5 the upper right-hand corner that was attached to State's
6 Exhibit Pretrial 1 now has a court reporter exhibit
7 sticker "State's Pretrial 1-A". The transcript that was
8 labeled "part two" in the upper right-hand corner and
9 also on the left-hand side has the original cause number
10 and the date of the interview in the upper left-hand
11 corner, as did the part one section, part two is now
12 labeled State's Pretrial 2 and that was the one -- 2-A
13 which came attached to Pretrial 2. And the transcript
14 that deals with the 9/24/12 interview in State's Exhibit
15 Pretrial 3 is now labeled on the bottom right-hand
16 corner as "State's Pretrial 3-A".

17 Does the State offer those for purposes of
18 the hearing?

19 MR. ROUSSEAU: Yes, Your Honor.

20 THE COURT: Any objection?

21 MS. KEENE: None.

22 THE COURT: All right.

23 (State's Pretrial Exhibit No. 1A - 3A
24 admitted)

25 THE COURT: And the Court understands, and

1 the law is clear, it's what you hear is what counts, not
2 what's on the transcript, but it's there as an aid.
3 And, also, quite frankly, since they're in evidence, if
4 the parties have things they wish to discuss in detail,
5 my record and rulings I might pencil in, with the
6 permission of the parties, "on page six, line..."
7 whatever of an exhibit. If that comes up, y'all can use
8 that for reference, and we'll use the transcripts to
9 keep track of what we're talking about and that will
10 make it easier on any subsequent court, if there is some
11 issue. They'll be at a bigger advantage versus scanning
12 through a DVD.

13 MR. ROUSSEAU: No objection to you marking
14 the transcript any way you need to, to help you make a
15 ruling, Your Honor.

16 THE COURT: Agreed?

17 MS. KEENE: Agreed.

18 THE COURT: All right. And, again, let the
19 record reflect I've put a few little time things and
20 little notes and I had marked with a yellow highlighter
21 at different times and there's not any real significance
22 to that other than marking where I stopped if I took a
23 break and things like that. And I will be honest, every
24 now and then there was something that "hummmm" and I
25 might have just subconsciously marked as I listened,

1 pretending, thinking I'm the lawyer and not the judge,
2 from having done both of your jobs, but the yellow
3 marking has no significance, and I put it there. It
4 wasn't on the transcripts when they were delivered by
5 the State. Everything was black and white only. That's
6 my highlighter.

7 All right. Then off we go -- off the
8 record.

9 (Discussion off the record)

10 THE COURT: Go ahead.

11 MR. ROUSSEAU: I think we can get this out
12 of the way upfront.

13 Your Honor, although I have -- we have these
14 statements that we've been talking about, something that
15 I discovered only this morning, frankly, Detective
16 Stewart brought it to my attention, is that on the day
17 of the arrest, the interview dated 9/24, when he was
18 providing the warnings mandated by 38.22, one of the
19 warnings was inadvertently omitted, the second warning,
20 the one regarding any statement he makes may be used
21 against him in court.

22 I've done some research this morning. My
23 preliminary research indicates to me that that causes me
24 to lose this statement. That being the case, I will not
25 be asking you for a ruling today. I will acknowledge to

1 the Court that I believe right now today that the law is
2 against me on that and that it will not be properly
3 admissible in court.

4 I discussed this with the Defense and I'd
5 ask permission just to continue my research after today
6 and if I find anything to the contrary, perhaps revisit
7 this when we get ready for trial, and I will bring it to
8 anyone's attention if I do find anything. But I don't
9 believe as I sit here today that that is an admissible
10 interview.

11 THE COURT: And let me say, I've had this
12 happen before, particularly with multiple interviews,
13 and it's really easy to let it all run together, which
14 by practice is have a little sheet of paper and check it
15 off no matter how many millions of times you've done it.
16 But I've had this happen probably three or four times
17 over the course of 20 years in the umpire seat. It's
18 always been multiple interview things, and the one they
19 usually forget is "you can terminate the interview at
20 any time." It happens. It's a human system; life
21 happens.

22 I will say this. I will preserve everything
23 that I've reviewed on that, if there were an issue to
24 come up under an impeachment theory or some other legal
25 theory that circumvents the 38.22 specific technical

1 requirements. But the last time I looked at the law on
2 this, it was not a -- the substantial compliance is as
3 to what was said or how it was said, not to the fact it
4 wasn't said at all. And I think my guts tell me your
5 research to date is probably accurate unless there's
6 been something new.

7 MR. ROUSSEAU: That's where I believe we
8 are, Your Honor, but I'll keep checking.

9 THE COURT: Well, thanks for that.

10 MR. ROUSSEAU: With that, I'm ready to call
11 Detective Stewart.

12 THE COURT: All right. Come on up.

13 You want the witness rule?

14 MS. KEENE: Yes.

15 THE COURT: I thought so.

16 Why don't both of y'all come on up and I'll
17 swear you then put one of you back by the coffee pot.

18 Each of you state your full, legal names for
19 Karen.

20 THE WITNESS: Byron Stewart.

21 THE WITNESS: Daniel Wade Easley.

22 THE COURT: All right. Each of you face me
23 and raise your right hand.

24 (Two witnesses sworn)

25 THE COURT: You both have been placed under

1 witness rules on occasions of prior testimony; is that
2 correct?

3 THE WITNESSES: Yes, sir.

4 THE COURT: You understand what the rules
5 require, where you may and may not be, who you may and
6 may not talk to and about what and in whose presence
7 while the trial is in progress; is that correct?

8 THE WITNESS: Yes, Your Honor.

9 THE COURT: Was that a "yes" nod?

10 THE WITNESS: Yes, sir.

11 THE COURT: All right. Make sure you answer
12 out loud and even if we all know what you mean.

13 Then the rule is in place until this case
14 actually gets tried, even though today will only be
15 pretrial matters, and there will probably be a delay
16 before the trial on the merits happens for evidentiary
17 reasons. And so if I say something, you might know
18 about it, but if I say something now, I would be
19 violating the rule. So y'all can talk individually to
20 the lawyers about when the new trial date might be, but
21 "mum" is the word unless you're speaking in private with
22 the attorneys or their investigators about what you know
23 in order to assist in their preparation or to prepare
24 for your testimony.

25 So you can come on up and have a seat.

1 (Witness takes the stand)

2 THE COURT: And, Detective Easley, you can
3 go back by the coffee pot.

4 (Witness excused from courtroom)

5 DETECTIVE BYRON STEWART,

6 having been first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MR. ROUSSEAU:

9 Q. You are Detective Byron Stewart; is that correct?

10 A. Yes, sir.

11 Q. Detective Stewart, are you a homicide detective
12 in the city of Arlington, Texas?

13 A. Yes, sir.

14 Q. Okay. And have you --

15 MR. ROUSSEAU: And with the Court's
16 permission, I'll lead a little bit to get to where we
17 need to be.

18 MS. KEENE: Absolutely.

19 THE COURT: That's fine.

20 Q. (BY MR. ROUSSEAU) And have you been a homicide
21 detective for a lot of years?

22 A. Yes, sir.

23 Q. I'll cut right to the chase then. Were you
24 assigned to investigate a capital murder, that is, a
25 murder involving two victims, that occurred at an

1 apartment in north Arlington on March the 20th of 2011?

2 A. Yes, sir.

3 Q. And did you -- ultimately did that investigation
4 reveal that the victims' names in that case were
5 Mechelle Gandy -- Mechelle, M-E-C-H-E-L-L-E, Gandy --
6 and Asher Ryan Olivas?

7 A. Yes, sir.

8 Q. And is it your understanding that Asher Olivas
9 was the child of Mechelle Gandy?

10 A. Yes.

11 Q. And did that homicide, those homicides,
12 essentially consist of Ms. Gandy being murdered by
13 cutting or stabbing at basically the same time that the
14 apartment is being caught on fire which caused the death
15 of the little baby?

16 A. Yes, sir.

17 Q. The little baby being Asher Olivas?

18 A. Yes, sir.

19 Q. So were you involved immediately, that is, from
20 the start, from the beginning of the night of March 20th
21 of 2011?

22 A. Yes.

23 Q. I want to move your attention somewhat forward in
24 the investigation. Did you become aware that the
25 individual, that the child, Asher Olivas, was purported

1 to be the biological son of an individual named Thomas
2 Olivas?

3 A. Yes, I did.

4 Q. And was it your understanding that there was some
5 sort of legal proceedings that had been initiated to
6 determine the parentage and ultimately to establish a
7 child support ruling regarding the child, Asher Olivas?

8 A. Yes.

9 Q. That is, a lawsuit had been established, had been
10 filed, that would ultimately result in the knowledge of
11 whether or not Mr. Olivas, Thomas Olivas, was in fact
12 the biological father of the child and in fact to
13 establish child support?

14 A. Yes.

15 Q. Okay. Were attempts made to contact Thomas
16 Olivas during the overnight hours between the fire
17 happening at the apartment and the next morning when the
18 sun came up?

19 A. Yes.

20 Q. And to your knowledge were any of those attempts
21 successful?

22 A. Not at that time, no.

23 Q. Is that a situation that you were monitoring;
24 that is, has anyone made contact with Mr. Olivas?

25 A. Yes, sir.

1 Q. And did you in the course of the early -- during
2 the part of your investigation did you determine that
3 Mr. Olivas lived in the city of Grapevine, Texas?

4 A. Yes, I did.

5 Q. And did you determine that he was employed at
6 Best Buy in Grapevine, Texas?

7 A. Yes.

8 Q. Did you do anything in regard to locating
9 Mr. Olivas, I mean locating where he actually was?

10 A. Yes.

11 Q. As opposed to where he lived?

12 A. Yes.

13 Q. Okay. Were Arlington police detectives
14 dispatched to locate Mr. Olivas sometime during the
15 morning of March the 21st?

16 A. Yes.

17 Q. And did you become aware during the day that
18 Mr. Olivas had in fact been located?

19 A. Yes.

20 Q. And was it that he was located at his job at Best
21 Buy?

22 A. Yes.

23 Q. Was this information related to you?

24 A. Yes, it was.

25 Q. And were you in Arlington at the time?

1 A. Yes.

2 Q. We're going to get to question-to-answer here in
3 a minute.

4 A. Okay.

5 Q. Was it brought to your attention that sometime
6 during the early -- during the afternoon that Mr. Olivas
7 had left his job and was en route presumedly back to his
8 apartment?

9 A. Yes.

10 Q. And were Arlington police -- well, were Grapevine
11 police personnel on scene at that apartment?

12 A. Yes, they were.

13 Q. Do you know whether or not contact was made with
14 Mr. Olivas after he had reached the parking lot of his
15 apartment?

16 A. Yes.

17 Q. Had you directed -- at that point in time did you
18 have a warrant to arrest Mr. Olivas?

19 A. No, I did not.

20 Q. Did you know for a fact whether or not Mr. Olivas
21 actually had any role in the death of his child and the
22 child's mother?

23 A. No, I did not.

24 Q. Was he -- how would you characterize Mr. Olivas
25 at that point in time?

1 A. As a person of interest and, also, as far as a
2 death notification that needed to be made.

3 Q. The death notification because he was the
4 purported father of the child?

5 A. Yes.

6 Q. All right. So once contact was made with
7 Mr. Olivas at the parking lot of his apartment, was that
8 information related to you?

9 A. Yes, it was.

10 Q. Did you make any type of request concerning
11 Mr. Olivas at that point in time?

12 A. I did.

13 Q. What did you do?

14 A. I contacted Detective Easley with the Grapevine
15 Police Department and I asked him if he would speak with
16 Mr. Olivas and ask him if he would be willing to be
17 transported to the Grapevine Police Department for
18 questioning.

19 Q. Do you know at that point in time whether or not
20 anyone asked Mr. Olivas whether they could conduct a
21 search of his premises, his apartment?

22 A. Yes, I am aware of that.

23 Q. And what was your understanding regarding whether
24 or not that consent was given?

25 A. My understanding is that he did give consent.

1 Q. And do you recall who was on -- well, let me ask
2 you, who were you in contact with at -- who at that
3 parking lot were you in contact with?

4 A. Detective Easley with the Grapevine PD, Detective
5 Willis or Hummel with the Arlington police, as well as
6 Detective Layne Shimpagh.

7 MR. ROUSSEAU: Just for the court reporter,
8 Shimpagh is S-H-I-M-P-A-U-G-H.

9 Q. (BY MR. ROUSSEAU) And Detective Layne Shimpagh
10 is a detective with the Arlington Police Department; is
11 that correct?

12 A. Yes, sir.

13 Q. All right. So you asked whether or not he
14 would -- anybody would give him a ride down to Grapevine
15 PD; is that correct?

16 A. Yes.

17 Q. Okay. Do you have any firsthand knowledge of how
18 he actually got to the Grapevine Police Department?

19 A. In my understanding, Detective Easley with the
20 Grapevine PD brought him to the...

21 Q. And I want to jump ahead a little bit. You
22 eventually interviewed Mr. Olivas, correct?

23 A. Yes, I did.

24 Q. And during that interview did he indicate to you
25 that it was in fact Detective Easley who had given him a

1 ride to the Grapevine PD?

2 A. Yes, he did.

3 Q. All right. Well, let's move back a little bit.

4 All right. Once you got word that he had
5 been contacted and that officers were dealing with him
6 at the complex, what did you do?

7 A. I started driving toward the city of Grapevine.

8 Q. And how long did it take you to get there?

9 A. I was rushing as fast as I could, but following
10 the rules of the traffic, it probably took me about
11 almost 30 minutes to get there.

12 Q. And when you arrived, where did you go?

13 A. Went straight to the police department in
14 Grapevine.

15 Q. Had you ever been there before?

16 A. I probably have in earlier times, but it's been a
17 while.

18 Q. When you got there, what did you do?

19 A. I contacted the person at the front desk, told
20 them who I was. They were -- I was told that, okay,
21 they were expecting me to come, so I was escorted to the
22 detective area.

23 Q. And in the detective area did you come into
24 contact with a person that you later came to know as
25 Thomas Olivas?

1 A. Yes, I did.

2 Q. And do you see that person present here in the
3 courtroom today?

4 A. Yes, I do.

5 Q. Could you point him out and describe an article
6 of clothing?

7 A. Sitting right here to my left wearing a dark
8 burnt orange jumpsuit.

9 THE COURT: What color is that?

10 THE WITNESS: It looks like Texas burnt
11 orange to me, but I can't tell if --

12 THE COURT: I don't think anyone at Texas
13 Tech would agree with that assessment.

14 Q. (BY MR. ROUSSEAU) I'm going to stand over here
15 and say: Is it this person?

16 A. No, it's not.

17 Q. Is it this person?

18 A. No.

19 Q. Is it this person --

20 A. Yes.

21 Q. -- in the firey red jumpsuit?

22 A. Is that firey red?

23 Q. That's pretty firey red.

24 A. Okay. Then firey red jumpsuit.

25 THE COURT: You need to slow down when

1 you're approaching all traffic intersections where the
2 lights run from left to right.

3 THE WITNESS: Okay.

4 THE COURT: But be very careful whether it's
5 yellow or red when there's so many choices.

6 I will let the record reflect when he asked
7 where is he, he looked at the Defendant, nodded toward
8 him and described where he's sitting in, I would call it
9 a Red Raider, I don't know if it would be firey, but
10 it's obviously red, and to be perfectly clear, it's not
11 close to burnt orange and that just happens to just be a
12 fact of color.

13 THE WITNESS: Okay.

14 THE COURT: But I have no doubt he's
15 referred to the Defendant in open court.

16 You may continue.

17 MR. ROUSSEAU: Okay. Thank you.

18 Q. (BY MR. ROUSSEAU) When you made contact -- is
19 this the same Mr. Olivas that we've been talking about
20 leading up to this point, as well?

21 A. Yes, it is.

22 Q. Once you made contact with him -- well, describe
23 where he was when you made contact with him.

24 A. He was sitting in the interview room at the
25 Grapevine PD.

1 Q. We've had a chance to -- and we provided the
2 judge with a recording of -- with a video recording of
3 that interview and there's an interview room with the
4 Defendant sitting in it. Is that room where you first
5 made contact with him?

6 A. Yes, it is.

7 Q. And when we can actually see you walk into the
8 interview room, was that your first contact with him?

9 A. Yes, it is.

10 Q. Okay. It may speak for itself, but let me just
11 cover a couple of items. Was he -- when you made
12 contact with him, was he in handcuffs?

13 A. No, he was not.

14 Q. Was he in leg shackles?

15 A. No.

16 Q. Was he physically restrained in any way?

17 A. No, he was not.

18 Q. Was he fully clothed?

19 A. Yes, he was.

20 Q. In his normal civilian clothing?

21 A. Yes.

22 Q. Was there -- the door to the interview room, was
23 it open or closed?

24 A. It was open.

25 Q. Was there a police officer posted outside the

1 door?

2 A. No.

3 Q. Was there anything -- were his movements
4 restricted in any way?

5 A. No.

6 Q. And was he formally under arrest?

7 A. No, he wasn't.

8 Q. To your knowledge had he been threatened in any
9 way?

10 A. No.

11 Q. To your knowledge was he forcibly taken to the
12 Grapevine Police Department?

13 A. No.

14 Q. When you made contact with him did you tell him
15 who you were?

16 A. Yes, I did.

17 Q. Did you tell him what you do for living, that is,
18 you identified yourself as a police officer?

19 A. Yes.

20 Q. And did you provide to him the warnings that are
21 commonly referred to as Miranda warnings that are
22 specifically required by Article 38.22 of the Code of
23 Criminal Procedure?

24 A. Yes.

25 Q. And you did this even though he was not under

1 arrest, correct?

2 A. That's correct.

3 Q. Did he indicate to you that he understood each of
4 those warnings?

5 A. Yes, he did.

6 Q. Did you read those warnings to him from a card?

7 A. Yes.

8 Q. So you didn't just recite them from memory?

9 A. No.

10 Q. I want to show you what's been marked as State's
11 Pretrial Exhibit No. 4. Take a look at that.

12 Do you recognize that?

13 A. Yes, I do.

14 Q. Is that a photocopy of the -- I'm just going to
15 call it the Miranda card. Is that a photocopy of the
16 Miranda card?

17 A. Yes, it is.

18 Q. Is it a true and correct copy?

19 A. Yes, it is.

20 Q. There are some markings at the top, looks like in
21 ink. Can you explain to me what that is?

22 A. That is the signature of Mr. Olivas.

23 Q. Okay.

24 A. And the date.

25 Q. Did you read these to him individually?

1 A. Yes.

2 Q. Did you ask him, after each one, if he understood
3 the warnings?

4 A. Yes.

5 Q. And did he indicate that he did?

6 A. Yes, he did.

7 MR. ROUSSEAU: Your Honor, I'll offer for
8 purposes of this hearing State's Pretrial Exhibit 4.

9 MS. KEENE: No objection, Judge.

10 THE COURT: All right. Admitted.

11 (State's Pretrial Exhibit No. 4 admitted)

12 Q. (BY MR. ROUSSEAU) And you have the original with
13 you in your file; is that correct?

14 A. Yes.

15 Q. Did Mr. Olivas show any reluctance whatsoever to
16 talk to you?

17 A. No, he did not.

18 Q. How would you characterize his attitude regarding
19 assisting you in your investigation?

20 A. He was cooperative.

21 Q. Did you later -- well, did you proceed to inform
22 him about the substance of what you were -- the reason
23 you were there?

24 A. Yes, I did.

25 Q. You told him you were investigating the death of

1 Mechelle Gandy and his son?

2 A. That's correct.

3 Q. And did he, during the course of your interview,
4 acknowledge that Asher Olivas was, at least to his
5 knowledge, his son?

6 A. Yes.

7 Q. Did he continue to cooperate?

8 A. Yes, he did.

9 Q. At some point in time did you ask him if he would
10 consent to providing -- to allowing you to photograph
11 him?

12 A. Yes, I did.

13 Q. And did he consent to most of the photographs?

14 A. Yes.

15 Q. Was there any reluctance to consent to
16 photographs of his -- I'm just going to say his torso,
17 chest and back. That is something that would require
18 him to take off his shirt. Okay?

19 A. Yes.

20 Q. Did he have any reluctance to you photographing
21 those portions of his body?

22 A. He initially did, yes.

23 Q. Did he ultimately consent to that, agree to being
24 photographed in that way?

25 A. Yes, he did.

1 Q. And did he provide you with a signed consent to
2 take those photographs?

3 A. Yes.

4 Q. And I'll just back up a little bit. During the
5 time that -- the entire time that you were in the
6 interview room with him, did Mr. Olivas sign a consent
7 for the police to conduct various types of searches?

8 A. Yes, he did.

9 Q. Were you the one who was getting him to --
10 actually handing him the documents for him to sign or
11 was someone else doing that?

12 A. Someone else was at that time.

13 Q. Who was that?

14 A. Detective Easley.

15 Q. And is Detective Easley -- he's the same person
16 who's here today and was sworn in a little while ago; is
17 that correct?

18 A. That's correct.

19 Q. And was he present in the room for most of your
20 interview with Mr. Olivas?

21 A. Yes, he was.

22 MR. ROUSSEAU: May we take a couple-minute
23 break? I've got a few documents to mark.

24 THE COURT: That's fine. We'll take a short
25 recess.

1 (Break taken, 10:45 - 11:10 a.m.)

2 (OPEN COURT, DEFENDANT PRESENT)

3 (Witness on the stand)

4 THE COURT: You may proceed.

5 Q. (BY MR. ROUSSEAU) Let me show you what I've had
6 marked as State's Pretrial Exhibits 5, 6, 7, 8, and 9.
7 Take a look at those, please, and I'll ask you a
8 question about them.

9 A. Okay.

10 Q. Do you recognize each of those?

11 A. Yes, I do.

12 Q. Are they all true and correct copies of the
13 originals?

14 A. Yes, they are.

15 Q. Okay. Are all consents to search signed by the
16 Defendant, Mr. Olivas?

17 A. Yes, they are.

18 Q. In each of these, regarding each of these
19 consents, was the consent freely and voluntarily given?

20 A. Yes, it was.

21 MR. ROUSSEAU: I will offer for purposes of
22 this hearing State's Pretrial 5, 6, 7, 8, and 9.

23 MS. KEENE: No objection, Judge.

24 THE COURT: All right. State's Pretrial 5,
25 which says iPhone; State's Pretrial 6, which says buccal

1 swabs of skin and mouth, is admitted. Pretrial 7, which
2 says photographs and swab of body and clothing, is
3 admitted. Pretrial 8, which says green Ford Explorer
4 and the license number, is admitted. And Pretrial 9,
5 which says single family residence, 601 Park Boulevard,
6 No. 208, is admitted.

7 To be clear, 5, 6, 7, 8, and 9 are offered
8 for the record for purposes of evidence in this hearing
9 only at this time; is that correct?

10 MR. ROUSSEAU: Yes.

11 THE COURT: And they're all admitted,
12 without objection, on that basis at this time.

13 Is that correct?

14 MS. KEENE: That's correct, Judge.

15 THE COURT: Then so be it.

16 (State's Pretrial Exhibit No. 5 - 9
17 admitted)

18 Q. (BY MR. ROUSSEAU) All right. Let's talk
19 about -- well, let's take these one at a time. First of
20 all, the iPhone, did the Defendant hand you an iPhone he
21 had with him?

22 A. Yes, he did.

23 Q. And was that -- were some of the contents of the
24 iPhone recovered by the police there at Grapevine PD?

25 A. Yes.

1 Q. And where he gave you consent to get buccal swabs
2 of his skin and mouth, was that done there at Grapevine
3 PD?

4 A. Yes.

5 Q. And he gave you -- to your knowledge was the
6 consent for his apartment, the one at 601 Park
7 Boulevard, No. 208, was that search done?

8 A. Yes.

9 Q. And I want to focus on two issues then, one
10 regarding the photographs taken of his body. Did he
11 have any concern whatsoever with taking photographs on
12 any part of his body other than his torso, that is, his
13 chest, back and shoulder area?

14 A. No, he did not.

15 Q. He was fully comfortable with all that, correct?

16 A. Yes.

17 Q. Okay. But he did have concerns about taking off
18 his shirt and letting you take pictures of his chest and
19 back, those areas; is that correct?

20 A. That's correct.

21 Q. Did he at one point in time ask you -- when you
22 first asked him, did he say something to the effect of
23 "I would prefer to 'consent' with someone over that"?

24 A. Yes.

25 Q. And did you clarify by asking him, "consult," did

1 he mean "consult" with someone?

2 A. Yes.

3 Q. A little later on did you ask him specifically if
4 he meant an attorney, did he want to talk to an
5 attorney?

6 A. Yes, I did.

7 Q. And did he ever say that yes, he wants to talk to
8 an attorney?

9 A. No, he did not.

10 Q. Did he say, in fact, "I don't know who," or words
11 to that effect?

12 A. Yes, he did.

13 Q. Okay. Did you eventually -- did you ever tell
14 him that if he doesn't -- if he refuses to let you take
15 a picture of his -- that is, if he refuses to take off
16 his shirt and let you take a picture of his back and
17 chest, his torso, did you tell him that if he refuses
18 that you have to honor that?

19 A. Yes, I did.

20 Q. Did you specifically tell him that he is not
21 under arrest?

22 A. Yes, I did.

23 Q. Did you tell him that you can't do this unless he
24 consents to it being done?

25 A. I did.

1 Q. Were there -- was there a back-and-forth
2 conversation between yourself and him and between
3 Detective Easley and him regarding your need for these
4 photographs?

5 A. Yes.

6 Q. And did he indicate to you that he didn't want to
7 take off his shirt for two reasons; one, because he does
8 in fact have scratches on his body -- at some point did
9 he tell you that?

10 A. Yes, he did.

11 Q. And that you might misinterpret those, or you
12 might assume that that was evidence of his guilt?

13 A. Yes.

14 Q. And I'm not quoting here but words to that
15 effect, correct?

16 A. Yes.

17 Q. And -- but he acknowledged that they were there?

18 A. Yes, he did.

19 Q. Did he also offer as a reason for not taking off
20 his shirt the fact that he suffers from a skin condition
21 that he calls eczema?

22 A. Yes.

23 Q. Ultimately, after discussion of this for, I want
24 to say, roughly around 20 minutes, did he ultimately
25 agree to take off his shirt and agree to be

1 photographed?

2 A. Yes, he did.

3 Q. Did you -- in order to convince him to take off
4 his shirt and agree to be photographed, did you threaten
5 him?

6 A. No, I did not.

7 Q. Did Detective Easley threaten him in your
8 presence?

9 A. No, he did not.

10 Q. Did you have the ability -- there were a few
11 times when you were out of the room, correct?

12 A. Yes. That's correct.

13 Q. When you were out of the room were you monitoring
14 the interview that Detective Easley was conducting?

15 A. Yes.

16 Q. Did you at any time see or hear Detective Easley
17 threaten the Defendant?

18 A. No, I did not.

19 Q. And by "threaten," I mean did you tell him, first
20 of all, did you imply or state directly at any time that
21 he would be injured if he did not comply?

22 A. No, I did not.

23 Q. Did you state directly or imply that he would be
24 arrested if he did not comply?

25 A. No, I did not.

1 Q. Did you state clearly or imply that if he did not
2 comply that he would be charged with capital murder?

3 A. No.

4 Q. Or with any offense whatsoever?

5 A. No, I did not.

6 Q. And he ultimately consented; is that correct?

7 A. Yes, he did.

8 Q. And -- well, he had previously signed a consent
9 for the photographing of other parts of his body,
10 correct?

11 A. That's correct.

12 Q. When I say "other parts," I mean, he had no
13 problem with rolling his sleeves up and showing you the
14 tattoos that go all the way up to his shoulder, correct?

15 A. That's correct.

16 Q. It was simply the torso that he had concerns
17 about?

18 A. That's correct.

19 Q. So he allowed you to photograph his hands, his
20 wrists, his arms, everything up to his shoulder, but he
21 didn't want to take off his shirt, correct?

22 A. That's correct.

23 Q. But he ultimately did give you that consent,
24 right?

25 A. Yes.

1 Q. And he took off his shirt?

2 A. Yes, he did.

3 Q. And the photographing took what would you say?
4 Can you give an idea of how long it took to take those
5 photographs?

6 A. I would say roughly five minutes.

7 MR. ROUSSEAU: Sorry, Karen, I should have
8 had you mark these on the break.

9 THE COURT: We'll take a short recess.

10 (Pause in proceedings)

11 Q. (BY MR. ROUSSEAU) Okay. I'll show you State's
12 Pretrial Exhibits 10 through 15. Would you take a quick
13 look at those and tell me whether or not those are true
14 and correct, whether they fairly and accurately depict
15 the torso of the Defendant as it appeared that day?

16 A. Yes, they do.

17 Q. Were these photographs taken by Detective Easley?

18 A. Yes, they were.

19 MR. ROUSSEAU: I'll offer 10 through 15
20 subject to any objection by Defense, for purposes of
21 this hearing.

22 MS. KEENE: No objection for purposes of the
23 hearing, Judge.

24 THE COURT: For purposes of the record, the
25 parties are in agreement these are the photos, some of

1 which you can observe being taken on the...

2 MR. ROUSSEAU: Yes, Your Honor, I --

3 THE COURT: Video, where there's noises,
4 that this is what appears to be going on?

5 Okay.

6 MR. ROUSSEAU: Yes, Your Honor, and there
7 are others that I'm not marking simply because they're
8 not the ones that involve his torso, but they are
9 photographs taken at the same time.

10 THE COURT: And I guess for record purposes,
11 these are things that during the course of at least the
12 interview that's on Pretrial 1 and 2, this is going on
13 in the course of the same events as the conversation
14 that's being discussed at this time. These pictures are
15 taken contemporaneous with the interview at the
16 Grapevine Police Department?

17 MR. ROUSSEAU: Yes, Your Honor. Yes.

18 THE COURT: Joetta, you agree with that?

19 MS. KEENE: Yes.

20 THE COURT: Okay. Then 10, 11, 12, 13, 14,
21 and 15 are each admitted for purposes of this hearing,
22 pretrial exhibits.

23 (State's Pretrial Exhibit No. 10 - 15
24 admitted)

25 (Pause in proceedings)

1 MR. ROUSSEAU: Judge, in an abundance of
2 caution, we're going to go ahead and offer the other
3 photographs that were taken that day. I missed one
4 involving the torso, but I'll qualify them to the
5 witness real quick.

6 THE COURT: All right.

7 Q. (BY MR. ROUSSEAU) Let me show you State's
8 Exhibit No. 16 through 23. Tell me if you recognize
9 those as being other photographs that were taken at the
10 same -- during the same interview that we've been
11 discussing?

12 THE COURT: Short recess.

13 (Discussion off the record)

14 THE COURT: All right. Have you had the
15 opportunity to look at the exhibits?

16 THE WITNESS: Yes.

17 THE COURT: You may continue.

18 Q. (BY MR. ROUSSEAU) They all fairly and accurately
19 depict the Defendant as he appeared the day that you
20 were interviewing him, that is, March 21st of 2011?

21 A. Yes, they do.

22 MR. ROUSSEAU: I'll offer State's 16 through
23 23 for purposes of this hearing.

24 MS. KEENE: No objection, Judge, for
25 purposes of the hearing.

1 THE COURT: All right. State's Pretrial 16,
2 17, 18, 19, 20, 21, 22, 23 are each admitted without
3 objection, for purposes of the pretrial hearing only.

4 (State's Pretrial Exhibit No. 16 - 23
5 admitted)

6 MR. ROUSSEAU: I'm not representing that
7 these are sequential. I'm just admitting them in that
8 order.

9 THE COURT: I understand that 10 through 23
10 inclusive are pictures taken during the course of the
11 interview that occurred at the Grapevine Police
12 Department, or contemporaneous therewith, not as to any
13 particular order or time sequence.

14 And you may continue.

15 Q. (BY MR. ROUSSEAU) Now, Mr. Olivas is -- do you
16 know his age, at the time you were talking to him? If
17 you need to refer to something, please do.

18 It might be stated -- the date of birth
19 might be stated on the Miranda card.

20 THE COURT: So to be clear, are you asking
21 what his age was or what his birth date was?

22 MR. ROUSSEAU: Just how old he was. That
23 might be useful to him.

24 THE WITNESS: '82, so...

25 Q. (BY MR. ROUSSEAU) This was 2011, so about

1 29 years of age?

2 A. Yes.

3 Q. Did he appear to be of at least average
4 intelligence?

5 A. Yes.

6 Q. Did he have any difficulties understanding your
7 communications with him?

8 A. No, he didn't.

9 Q. Did he ask sensible questions in response, that
10 is, if he needed clarification?

11 A. Yes, he did.

12 Q. Did the answers that he provided make sense in
13 the context of your conversation with him?

14 A. Yes.

15 Q. So he understood what you were saying?

16 A. Yes, he did.

17 Q. And just to jump ahead just a little bit, at one
18 point in time, when you were asking for consent to
19 search the Explorer, did he indicate that he had no
20 problem with it but it's not -- he had misgivings about
21 giving consent because he didn't know if he had the
22 right to do that?

23 A. That's correct.

24 Q. Was it your understanding that was a loner car;
25 that is, it did not belong to him?

1 A. Yes.

2 Q. And was that the basis of his misgivings?

3 A. Yes.

4 Q. At some point in time toward the end of the
5 interview, did he actually use the term "lawyer up"? Do
6 you recall that?

7 A. No.

8 Q. Let me help you out just a moment, please.

9 First of all, are you familiar with the term
10 "lawyer up"?

11 A. Yes, I am.

12 Q. What does that mean?

13 A. I take it as one wants a lawyer at that point.

14 Q. Okay. Turn to the, if you would, please -- you
15 have the transcript with you; is that correct?

16 A. Yeah, I have two. Which one are you...

17 Q. It's the transcript, the second part of the first
18 interview, the one from March 21, the second part of
19 that interview.

20 A. The one that starts off with "male voice off
21 camera" or...

22 Q. Let me show you.

23 A. Okay.

24 This one?

25 Q. Yeah. Turn to the last page.

1 Did you ask -- I want to go up ahead of that
2 just a little bit. There was a question you asked. Did
3 you ask Mr. Olivas a question about Amanda and giving
4 consent to search her car?

5 A. Yes.

6 Q. Now, is Amanda Rowe the individual that you
7 understand to be the owner of that vehicle?

8 A. That's correct.

9 Q. And Amanda Rowe -- he, the Defendant, told you
10 that's who owned the car, correct?

11 A. That's correct.

12 Q. So when you refer to "Amanda", you're talking
13 about Amanda Rowe?

14 A. Yes.

15 Q. Your question to him at the end of that is, "If I
16 have to get -- so you think I need to call her and get
17 her permission for that?" What is his response?

18 A. On line 12?

19 Q. Yes.

20 A. "I can't say yes to that one cause -- cause and
21 knowing her, she'll lawyer up."

22 Q. "I can't say yes to that one cause and knowing
23 her, she'll lawyer up"?

24 A. Yes.

25 Q. So does that indicate to you that he knew that a

1 person could say no to something?

2 A. It does.

3 Q. And say, "No, I want to speak to a lawyer"?

4 A. Yes.

5 Q. Did he ever, himself, refuse to answer a question
6 and say, "I want to speak to an attorney first"?

7 A. No, he didn't.

8 Q. Even though you had asked him specifically
9 whether or not he -- when he first said he would like to
10 consult with someone, you asked him specifically if he
11 meant a lawyer, correct?

12 A. That's correct.

13 Q. Did the Defendant tell you, during the course of
14 your interview with him, what he did for a living?

15 A. Yes.

16 Q. Did he indicate to you that -- you already knew
17 about his job at Best Buy, right?

18 A. Yes, I did.

19 Q. Did you already know about his job as a waiter at
20 a restaurant called TruLuck's?

21 A. I learned that in the interview.

22 Q. So is it your understanding a waiter's job must
23 deal with the public and talk to the people one-on-one
24 and be able to understand what they need?

25 A. Yes.

1 Q. Did he also say he had another job?

2 A. Those are the only two that I recall.

3 Q. Do you recall him saying anything about being an
4 Air Force reservist?

5 A. Oh, yes.

6 Q. Being in the military?

7 A. Yes.

8 Q. Did he say -- do you recall him saying what
9 specifically he did for the military?

10 A. He was in the medical field.

11 Q. An EMT?

12 A. Yes.

13 Q. And did he exhibit some knowledge -- when
14 Detective Easley was obtaining a buccal swab, did he
15 seem to indicate some knowledge that he had regarding
16 buccal swabs?

17 A. Yes.

18 Q. Did you inquire of him -- during the course of
19 your interview, did you inquire, did you ask any
20 questions regarding his educational background?

21 A. As far as...

22 Q. Did you obtain an understanding of his level of
23 education?

24 A. Yes.

25 Q. Do you recall what that is?

1 A. He finished high school and had some college.

2 Q. All right. So, Detective, just to sum it up, did
3 the Defendant, in removing his shirt and allowing you to
4 take photographs of his torso, did he do that fully
5 understanding what his rights were?

6 A. Yes, he did.

7 Q. And did he knowingly, voluntarily and
8 intelligently waive those rights and allow you to -- or
9 allow you to have Detective Easley take those
10 photographs that we've seen here in court?

11 A. Yes, he did.

12 MR. ROUSSEAU: I will pass the witness, Your
13 Honor.

14 Oh, Ms. Keene was kind enough to copy me --
15 she called me before she sent this email to Detective
16 Stewart a couple of days ago, and she was kind enough to
17 copy me on the email, requesting him to list out every
18 individual that he talked to in connection with this
19 offense. While I think that is an appropriate inquiry
20 for the trial, I don't believe it's appropriate for
21 here, for this proceeding, unless it has some bearing on
22 Mr. Olivas' consent, the issues that are raised in the
23 motion to suppress. Just because she was kind enough to
24 let me know she intended to ask about that, before she
25 starts talking, I'm saying it now rather than objecting

1 later.

2 MS. KEENE: Judge, it's a discovery issue.
3 It will be dealing with our discovery motion. It's not
4 for --

5 THE COURT: It's not something for crossing
6 a witness on a motion to suppress. It's stuff for --

7 MS. KEENE: I would like to ask him on the
8 record under oath about the witnesses he talked to,
9 their names, for purposes of discovery and the discovery
10 motion.

11 THE COURT: Was this reduced to writing?

12 MS. KEENE: I think he -- I asked if he
13 could reduce it to writing. We could do it that way,
14 too. It doesn't matter.

15 THE COURT: Did you get the list?

16 THE WITNESS: Yes, sir.

17 THE COURT: Do you have a copy of the
18 written document that lists the names?

19 THE WITNESS: Typed.

20 THE COURT: Typed document?

21 THE WITNESS: Yes.

22 THE COURT: Do you have it with you?

23 THE WITNESS: Yes.

24 THE COURT: I mean, that you prepared
25 specifically in reference to her request?

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. If you'll give me that
3 document, the sheriff will go make a copy for the State
4 and a copy for the Defense. And...

5 MS. KEENE: And we can move on.

6 THE COURT: And you're good. If you want
7 one for the record, you can mark one for the record.
8 Make like four copies.

9 And that covers your concern?

10 MS. KEENE: Yes.

11 THE COURT: Well, there you go.
12 And, Detective, thank you for that.

13 And you may continue.

14 CROSS-EXAMINATION

15 BY MS. KEENE:

16 Q. Okay. I hope I don't have that many questions
17 for you.

18 A. Okay.

19 Q. Whenever Thomas was brought to Grapevine Police
20 Department, he was not under arrest?

21 A. Yes, ma'am.

22 Q. He was free to go?

23 A. Yes.

24 Q. Did you have probable cause to arrest him if you
25 wanted to?

1 A. No.

2 Q. Did you have probable cause to detain him if you
3 wanted to?

4 A. Just for the questioning. I had probable cause
5 to detain him for questioning, yes.

6 Q. To detain him for questioning?

7 A. Yes.

8 Q. What was the probable cause you had to detain him
9 for questioning?

10 A. Well, I would say just to, again, speak with him
11 about the offense and, also, again, for the notification
12 of the deaths.

13 Q. Is that something that you could have done at his
14 house as opposed to the police department?

15 A. It could have been done there.

16 Q. How come you made a decision to do it at the
17 police department as opposed to his house?

18 A. Due to the number of questions that I had and the
19 fact that I wanted it documented, as well, I asked that
20 he go to the Grapevine Police Department.

21 Q. So in your mind you've got probable cause to
22 question him as far as notification of the death,
23 correct?

24 A. Well, I wouldn't say probable cause. Just the
25 obligation to tell him, you know, what the situation

1 was.

2 Q. But he was certainly in your mind at this point a
3 person of interest?

4 A. Yes. To talk to him about the offense, yes.

5 Q. But you knew that you didn't have probable cause
6 to detain him to ask him those questions, at that time?

7 A. Probable cause to detain him?

8 Q. Yes.

9 THE COURT: Will you define what you mean by
10 "detain," Counsel, so the record will be clear and we'll
11 all be clear.

12 Q. (BY MS. KEENE) You believe you had probable
13 cause to hold him and say, "I have questions and you are
14 not free to leave"?

15 A. Everything that I did with him was voluntarily,
16 so I asked if he would be willing to come to the
17 Grapevine Police Department.

18 Q. If he'd said no, you believe you could have said,
19 "Stop, I need to ask you some questions"?

20 A. If he'd said no, I would have to honor that, at
21 that time.

22 Q. Okay. And so you felt like you did not have the
23 probable cause to talk to him if he chose not to talk to
24 you?

25 A. At that time, yes.

1 Q. And you'd sent out, you said, an Arlington police
2 officer and there's also a Grapevine Police Department
3 present at his apartment; is that correct?

4 A. Yes.

5 Q. And you also sent them out to his work?

6 A. Well, yes.

7 Q. How many police officers went to his work, if you
8 know?

9 A. It was the detectives in the fugitive unit. They
10 also do surveillance, as well, and I would say at least
11 two of them had gone to Best Buy.

12 Q. And was that Arlington police officers?

13 A. Yes.

14 Q. And they were fugitive officers?

15 A. Yes.

16 Q. How come you chose fugitive officers as opposed
17 to parole officers?

18 A. They were plainclothes and, again, they do
19 surveillance, as well.

20 Q. So they were more equipped to just go see if the
21 guy has even showed up for work, basically?

22 A. Yes.

23 Q. It was not their job to identify themselves as
24 police officers and to detain him or to talk to him?

25 A. No.

1 Q. And they did their job, they saw that he was at
2 work?

3 A. Yes.

4 Q. And then they followed him back the entire way,
5 from Best Buy to his house?

6 A. Yes.

7 Q. And when they got to his house there were some
8 Grapevine police officers that were present at the
9 apartment complex?

10 A. Yes.

11 Q. How many Grapevine police officers were present
12 at Thomas' apartment complex?

13 A. I don't know exactly how many, but I know there
14 were at least two, and that would be Detective Easley
15 being one and a uniformed officer.

16 Q. So whenever Thomas parked his car, got out of his
17 car, did anything happen with any of these police
18 officers, if you know?

19 A. As far as what exactly?

20 Q. Did he get to go in his house? How does he end
21 up, with all these police officers at his house, to
22 being in the police department, if you know?

23 A. I don't know exactly what happened. I just know
24 that he was eventually taken to the Grapevine Police
25 Department.

1 Q. Okay. And that's something -- Easley is here and
2 we can talk to him about that; is that fair?

3 A. That's fair.

4 Q. And it's your knowledge that Easley was one of
5 the persons that was present when this all happened,
6 when this event happened at his apartment?

7 A. That's correct.

8 Q. But, anyway, you were told that Thomas was
9 heading to the Grapevine Police Department?

10 A. Yes.

11 Q. Would Thomas have been allowed to get in his
12 truck and drive to the Grapevine Police Department?

13 A. I would assume he could have been, you know. It
14 just depends on what he and Detective Easley talked
15 about at the time.

16 Q. Would Thomas had been able to just go into his
17 house and shut the door?

18 A. Yes.

19 Q. How was Thomas brought to the police department?

20 A. My understanding, Detective Easley took him to
21 the police department.

22 Q. So he didn't bring his car?

23 A. No.

24 Q. He actually rode in a police car?

25 A. I don't know if it was a marked car, but, yeah,

1 it could have been a police car.

2 Q. He rode with the police, and we'll find out later
3 what type of car that was.

4 A. Yes.

5 Q. How many police officers do you think brought him
6 to the police station?

7 A. My understanding, it was just Detective Easley.

8 Q. And then once he got to the police station, how
9 long did he stay at the police station before you got
10 there to question him?

11 A. Well, I would consider the drive from his
12 apartment to the police department and then my time of
13 arrival, I would say he probably waited somewhere around
14 20 to 25 minutes.

15 Q. And in that 20 to 25 minutes was he free to go?

16 A. Yes, he was.

17 Q. If he got up and left, how would he get a ride
18 back to his apartment?

19 A. He would have to let Detective Easley know and
20 tell him what his desires were and at that point, take
21 him back.

22 Q. Okay. So once you've come into play and you get
23 there and begin to talk to him -- and we all can just
24 watch the video. I don't need to go -- the judge has
25 watched it. We've all watched it -- over the specifics,

1 but you begin to interview him; is that correct?

2 A. That's correct.

3 Q. And is everything that you said to him, any
4 interaction that you had with him, recorded?

5 A. Yes.

6 Q. Is there anything that you said to him or
7 anything that he said to you that is not recorded?

8 A. Not at that time, no.

9 Q. Are there -- do you know if there's any
10 recordings from Grapevine of anything they said or that
11 he said to them?

12 A. Prior to my arrival?

13 Q. Yes.

14 A. No, I'm not aware of anything.

15 Q. You don't know if there's any other tape
16 recordings or video recordings in regards to Thomas
17 Olivas, except for the ones that you took on that day?

18 A. That's correct.

19 Q. And then on the arrest day?

20 A. Yes.

21 Q. All right. Once you began to talk to him, he was
22 very cooperative?

23 A. Yes.

24 Q. And he agreed to answer your questions; is that
25 correct?

1 A. That's correct.

2 Q. But you felt compelled to read him his warnings;
3 is that correct?

4 A. That's correct.

5 Q. How come?

6 A. Just in case his involvement was more than I knew
7 at the time.

8 Q. And so what were you worried about, if his
9 involvement was more than you knew at the time to read
10 him his rights, why was that important if he wasn't
11 under arrest?

12 A. I just wanted him to be fully aware of what his
13 rights were.

14 Q. Prior to you reading him his rights, did you ask
15 him about being able to look into his vehicle there at
16 the apartment? Do you recall?

17 A. No, I do not.

18 Q. Do you have the transcript?

19 This will be easier. I'll reference a page,
20 you can look at it, and then I'll ask you a question,
21 because I know it's, what, four hours, basically, of
22 conversation. It's going to be in the very first
23 transcript, page three, line ten to about line 30, that
24 general discussion in there.

25 THE COURT: Is ten, "Okay, we want to go

1 ahead and do the vehicle..." et cetera?

2 MS. KEENE: Yes.

3 THE COURT: Okay.

4 Q. (BY MS. KEENE) There's two transcripts from the
5 first report.

6 MR. ROUSSEAU: Byron, the first one is going
7 to start with "Male voice..."

8 (Pause in proceedings)

9 THE WITNESS: Okay. I'm sorry. What's the
10 question again?

11 Q. (BY MS. KEENE) All right. Basically, before you
12 read him his rights, you talk to him about the apartment
13 and the vehicle, searching it, correct?

14 A. That's correct.

15 Q. And he hesitates on the vehicle; is that correct?

16 A. That's correct.

17 Q. And he doesn't give you consent. And you say,
18 "Let's just talk about that in a minute," and then you
19 move on to the rights?

20 A. Yes.

21 Q. Is that fair to say?

22 A. Yes.

23 Q. And then you end up reading him his rights. You
24 basically said, "Let's just hold off on that." Y'all
25 had a small conversation, what, less than a minute

1 probably, in real time, and then you talk about a couple
2 of little things, but then you read him his rights; is
3 that correct?

4 A. That's correct.

5 Q. And then y'all talk about a number of different
6 things. And then now if you go over to the second
7 transcript and at about page 22 you revisit the issue
8 about the car. And does that kind of seem -- this would
9 be about two hours after the first conversation with the
10 car. So a significant time has passed?

11 A. Yes.

12 Q. Does that seem about right?

13 A. That's correct.

14 Q. Basically, you had a conversation with him about
15 the car. He's hesitant and does not give you consent.
16 Y'all then talk for two hours about a lot of things and
17 then you again bring up the car; is that fair?

18 A. That's fair.

19 Q. And you bring it up at about -- we can just --
20 line seven. Okay? You go back to his care, custody and
21 control of the car. Is that correct?

22 A. That's correct.

23 Q. And he tells you, "I can't give consent to that."
24 Is that correct?

25 A. That's correct.

1 Q. Is that a "no, I'm not giving you consent" to
2 you?

3 A. No. No, it's not.

4 Q. So if someone says, "I can't give you consent to
5 that," you don't take that as him saying, "I'm not
6 giving you consent to that"?

7 A. No.

8 Q. You take that as "I need to continue and ask a
9 lot more questions"?

10 A. I take that as "I need to make clarification on
11 why you can't."

12 Q. Okay. And so then you talk then for about, oh,
13 three or four pages on the transcript -- second
14 transcript, page 22, starting at about line seven -- and
15 then you guys talk and continue to talk about the car,
16 his ability and why you really need to look in the car,
17 get his consent; fair to say?

18 A. That's fair to say.

19 Q. And then it is not until page 24, line 38 that he
20 says, "Okay, then I'll give consent." Is that correct?

21 A. Page 24, line...

22 Q. Thirty-eight.

23 A. Yes.

24 Q. And so basically it took, on transcript, three
25 pages plus the first discussion to have with him before

1 he would give consent to look in the car; is that
2 correct?

3 A. That's correct.

4 Q. He had concerns about there being things in there
5 that might make look him guilty as well as him having
6 the authority to give you the consent; is that correct?

7 A. That's correct.

8 Q. And he talked to you about both of those issues
9 when he was making the decision to give the consent or
10 not; is that correct?

11 A. That's correct.

12 Q. So when he first told you, "I can't give consent
13 to that," he was referring to what you learned upon
14 talking to him more because he was talking about not
15 having the legal authority and also being concerned
16 about the smell of gas in the car?

17 A. That was his concern.

18 Q. Okay. So he had two concerns of why he could not
19 give consent, correct?

20 A. Correct.

21 Q. And you talked to him for these number of pages
22 and then he says, "Okay, then I'll give consent."
23 Correct?

24 A. That's correct.

25 Q. The judge can watch the demeanor and the manner

1 in which that conversation takes place because y'all
2 took a video of it?

3 A. That's correct.

4 Q. All right. Now, when we talk about the torso,
5 okay, that was really -- and in looking at this whole
6 interview, Thomas gave consent to look at his iPhone,
7 correct?

8 A. That's correct.

9 Q. No resistance at all?

10 A. That's correct.

11 Q. He just said, "Here, take my iPhone," correct?

12 A. Yes.

13 Q. You said, "What's this -- I think at some point
14 you say, "What's your password," and he gives out his
15 password for it. No problem. There's no talking him
16 into the consent for the iPhone, correct?

17 A. Yes, he gave consent.

18 Q. Or for the buccal swabs, the DNA; is that
19 correct?

20 A. Yes, he gave consent.

21 Q. For looking inside his house, correct?

22 A. He gave consent.

23 Q. But there was no talking him into that consent?

24 THE COURT: Am I understanding your
25 question, there was no prolonged discussion about it,

1 it's just...

2 MS. KEENE: Yeah, there you go.

3 THE COURT: "Can we do that?"

4 "Yes, that's fine." Is that what you mean
5 by "talking into"?

6 MS. KEENE: Yeah.

7 THE COURT: All right.

8 Is that correct?

9 THE WITNESS: Yes. Yes, Your Honor.

10 THE COURT: Okay.

11 Q. (BY MS. KEENE) In other words, "Can I look at
12 your iPhone," you know, you have consent, and he says
13 Yes. You don't have to have a long discussion about
14 whether or not he gives consent; is that correct?

15 A. Yeah, that was not a prolonged discussion.

16 Q. Where there were prolonged discussions was really
17 in two different areas. Is that from your memory? Am I
18 being correct?

19 A. Yes.

20 Q. One was the torso pictures, him taking his shirt
21 off and y'all taking pictures of his torso, and
22 the second one was the car, the search of the car; is
23 that correct?

24 A. Yes.

25 Q. And so if you look at what would be the second

1 interview, page eight, and you look at about page (sic)
2 11, this is the first time, I believe, that you begin to
3 talk to him about taking pictures of his body.

4 Okay. You see where I'm talking about, page
5 eight, line 11?

6 A. Yes.

7 Q. You say, "Are you willing to let me photograph
8 your hands?" And he says, "Yeah."

9 "How about your back and shoulders and all
10 that kind of stuff, will you let me do that?" And you
11 said, "I'd have to get consent."

12 "Actually on that one, I'm not... It's just
13 one of those things, uh, not yet, no," is that his
14 response?

15 A. I'm sorry. Hold on just a second.

16 Q. Well, actually I can keep it more simple than
17 this, than reading this. Whenever you first asked him
18 to take pictures of his torso, he said he did not want
19 to do that; is that correct?

20 A. That's correct.

21 Q. And then you begin, I think you testified on
22 direct, about a 20-minute conversation with him about
23 why he didn't want to do that, and that's when you
24 talked about the eczema and different things, correct?

25 A. That's correct.

1 Q. And then you also learned he was concerned about
2 the fact that he had scratches on his back. He also
3 didn't want to do it because of that, correct?

4 A. That's correct.

5 Q. So like the car where he had two different
6 concerns for why he didn't want to give consent, on the
7 body he had also two different concerns; one was he had
8 scratches and one was he was embarrassed by the eczema?

9 A. That's correct.

10 Q. And so it was after a 20-minute conversation with
11 him, after he said no, he didn't want to, to let the
12 pictures be taken, that he then says yes, instead of
13 reading every line. The judge has seen it, basically.
14 Is that about right?

15 A. Yes.

16 Q. He certainly said no in the beginning on the
17 taking pictures of his torso.

18 A. Are you asking me?

19 Q. Yes.

20 A. Yes.

21 Q. Okay. In fact, throughout the conversation you
22 had with him, you told him that you can get a search
23 warrant to take the pictures. Do you recall that?

24 A. No, I do not.

25 Q. Okay. Maybe you can clarify this. This is on

1 page 12. Maybe it's not you. Maybe it's Easley. It
2 says, "Actually, I can go get the search warrant."

3 "You can take the pictures." And I don't
4 know if that's a side conversation that's happened and
5 this is -- the transcript is revealing it incorrectly.
6 What is your memory of this?

7 A. I don't exactly know what that was, as far as in
8 relation to the pictures, but I don't think it's in
9 relation to the pictures.

10 Q. Okay. You think that's in relation to something
11 else? It just reads funny. It just reads...

12 A. I mean, you would have to talk to Detective
13 Easley. That "E" indicates it's him.

14 Q. Okay.

15 A. And so -- but there was no discussion as far as
16 search warrant for the pictures.

17 Q. So you never told Thomas in all this that you
18 could go get a warrant to take the pictures?

19 A. No, I did not.

20 Q. In fact, you didn't have probable cause to go get
21 a warrant to take the pictures, did you?

22 A. No.

23 Q. You were relying on his consent or you weren't
24 going to be able to get the pictures; is that correct?

25 A. Yes.

1 Q. And so that's why it was important for you to
2 continue to talk to him about letting you take the
3 pictures because he had said no. It was important to
4 get the consent.

5 A. Are you asking me that?

6 Q. Yeah.

7 A. Okay. I wanted the pictures and so I asked.

8 Q. But when he said no, you didn't honor the "no".

9 A. Well, my point was that he just needed to feel
10 comfortable as far as giving me the pictures and so I
11 asked him for the pictures on that basis.

12 Q. And when he said no, you didn't take "no" as an
13 answer?

14 A. That's correct.

15 Q. If he had said, "I want a lawyer. I do not want
16 to talk -- if you said, "Do you want to talk to me,
17 Thomas," and he said no, would you take that "no" as an
18 answer?

19 A. Okay. If he'd said he wanted a lawyer?

20 Q. Yeah.

21 A. Then I have to honor that.

22 Q. If you said, "You want to talk to me now," and he
23 said no, would you have to honor that "no" right then?

24 A. If he didn't want to talk to me?

25 Q. Yes.

1 A. No, I can still ask for that.

2 Q. So if he says, "I don't want to talk to you," you
3 can continue to talk to him?

4 A. If he says he wants a lawyer, I would have to
5 honor that. If he said he doesn't want to talk to me,
6 then, you know, it's my job to try to convince him to
7 talk to me.

8 Q. Okay.

9 MS. KEENE: May I approach the witness,
10 Judge?

11 THE COURT: Yes.

12 Q. (BY MS. KEENE) And I'm showing you what's been
13 marked as Pretrial 1. Is this basically the list of the
14 different witnesses that you or your team talked to
15 during your investigation in this case?

16 A. Yes.

17 Q. And this is something you prepared for the
18 pretrial hearing today? Or is this something you
19 already had prepared?

20 A. No, this is something I prepared.

21 Q. Okay. And you did it so that -- to basically
22 refresh your memory of what is really a lot of witnesses
23 that you talked to; is that correct?

24 MR. ROUSSEAU: Objection. Just a moment.

25 May I take him on voir dire on that point,

1 Your Honor?

2 THE COURT: Well, she hasn't offered it yet.
3 When she offers it, you can.

4 MR. ROUSSEAU: Well, it's the basis upon
5 which -- he prepared that in response to her request
6 that he do so, not to help him prepare for this hearing.
7 She asked him in an email to prepare it.

8 THE COURT: And that was the discussion off
9 the record of the email and the request and I think -- I
10 don't know if we were off the record when you were
11 saying is this hearing going into cross-examination
12 about discovery or is it going to deal with the
13 suppression motions. She sent an email. She
14 acknowledged. You got a copy. You acknowledged. I
15 asked him did he in fact respond to the request and he
16 showed me a document he prepared, that the deputy made
17 copies for everyone. And instead of her ask him to list
18 names or anything, there's a copy I told her she can
19 mark and offer to show these are the names we were
20 provided in response to the request instead of going
21 through a lengthy examination.

22 So I understand your concern about the
23 characterization of "this is done to refresh his
24 memory". Maybe that was poorly or unartfully worded
25 based upon the record that happened before, but I

1 understand he has a list she asked him to prepare. He
2 responded to her request. She has a copy, if she wants,
3 to put in the record to show this is a list of everyone
4 you talked to, to show her discovery concerns are
5 addressed. And if it's beyond that, then...

6 MR. ROUSSEAU: I understand, Your Honor.
7 That's fine.

8 THE COURT: I think we're in a different
9 situation.

10 MS. KEENE: It's not beyond that, Judge.
11 That's it. I didn't mean any characterization of
12 whatever was taken.

13 THE COURT: Well, I mean, what the
14 black-and-white will read, for posterity, is you
15 prepared this list to refresh your memory, to assist you
16 in trial versus you prepared this list because I asked
17 you to please make a list of all the witnesses and you
18 responsibly and professionally did what I asked as
19 opposed to have the judge order it. And so in light of
20 the context, I understand Kevin's concern, but it's a
21 discovery issue, and it's still your witness and it's
22 marked Defense Pretrial 1, so you may continue.

23 Q. (BY MS. KEENE) So in Pretrial 1, you prepared
24 this list in response to me sending you an email and
25 asking you to prepare the list; is that correct?

1 A. That's correct.

2 MS. KEENE: I'll offer Pretrial 1 for
3 purposes of this record, Judge -- I mean -- for purposes
4 of this hearing.

5 MR. ROUSSEAU: No objection for purposes of
6 this hearing.

7 THE COURT: All right. It's admitted and
8 it's admitted for purposes of the pretrial hearings in
9 general, not just the motion to suppress but including
10 any other motions that have been filed that have been
11 largely responded to without a court order, and I'm
12 happy to say on behalf of both sides in their
13 professionalism.

14 (Defendant's Pretrial Exhibit No. 1
15 admitted)

16 THE COURT: You may continue.

17 Q. (BY MS. KEENE) Did you ever talk to Thomas
18 outside of the two interviews that you recorded?

19 A. Yes.

20 Q. And when did you talk to him?

21 A. He called me on the phone a couple of times.

22 Q. Do you know when he called you on the phone?

23 A. Well, no, actually. I did not document those
24 times that he called.

25 Q. How long would you talk when he called you on the

1 phone?

2 A. Very briefly, at some point about the status of
3 the case. At one point I think he told me about an
4 attorney, that he was trying to contact an attorney.

5 Q. Okay. And what attorney was that he was trying
6 to contact?

7 A. I don't know exactly which one. I mean, it was
8 on his own, but he had mentioned that he was trying to
9 contact an attorney.

10 Q. And how long after the -- was this in between the
11 first conversation and the second conversation?

12 THE COURT: Are you talking about the first
13 video and the second video?

14 MS. KEENE: Yeah.

15 THE WITNESS: The first video on the -- when
16 he first -- when I talked to him?

17 Q. (BY MS. KEENE) It was after that but before the
18 arrest?

19 A. It was after that conversation.

20 Q. About how long after the March 21st, 2011
21 discussion with him did he call you?

22 A. I want to say a couple of days after that.

23 Q. And is that when he talked to you about he was
24 contacting a lawyer?

25 A. No. Again, the first conversation was about

1 what's going on and numbers that I can get in contact
2 with other people to verify where he was and stuff at
3 the time and then I would say maybe a month after that
4 he talked to me about an attorney.

5 Q. So a couple of days after this who did he tell
6 you that you could contact in the numbers that he gave
7 you? Do you recall that?

8 MR. ROUSSEAU: I object, Your Honor, for
9 purposes of this hearing. We're outside the scope of
10 the hearing.

11 THE COURT: I am going to allow limited --
12 there's a motion to suppress statements of the Defendant
13 and since this is a conversation, I'm going to allow it
14 to go as long as it deals with the substance of the
15 conversation, in case this comes up later so it's in the
16 record and we've dealt with it. I'm not going to let
17 her ask did he call those people, what did they say, but
18 as far as any conversation with the accused, I'll allow
19 her to go into those, whether they're on video or not.

20 So you may continue -- read the last
21 question back to the witness.

22 THE REPORTER: "So a couple of days after
23 this who did he tell you that you could contact in the
24 numbers that he gave you? Do you recall that?"

25 THE COURT: You can answer.

1 THE WITNESS: I think he gave me the name of
2 Isaac Huerta and Wasim -- I can't recall his last name.
3 These are two friends of his.

4 THE COURT: And hold on. What was that
5 second name?

6 THE WITNESS: Wasim, I think is his first
7 name.

8 THE COURT: Can you spell that, as best you
9 understood it, for the court reporter?

10 MR. ROUSSEAU: Your Honor, I can provide the
11 names, the first and last names, if it would be helpful.

12 THE COURT: You know that individual so you
13 can give that to Karen at the end of the hearing.

14 MR. ROUSSEAU: Yes.

15 THE COURT: Thank you.

16 You may continue.

17 Q. (BY MS. KEENE) Do you know if he gave you any
18 other names or numbers, if you recall?

19 A. I can't recall.

20 Q. But you know it was a short conversation, long
21 conversation?

22 A. Short.

23 Q. And he called you and basically gave you these
24 names, numbers of different people you could contact?

25 A. Either he called me or I called him. You know,

1 it could go either way.

2 Q. And then it was after that conversation, about a
3 month later, that he called and told you that he was --

4 A. Roughly, again, either I called or he called
5 trying to maintain contact.

6 Q. And is that when he talked to you about he was
7 talking to a lawyer?

8 A. He mentioned that he talked to his parents, or
9 something like that, and that they were trying to look
10 for an attorney, or something like that.

11 Q. And was there ever a time that you actually
12 talked to a lawyer about Thomas?

13 A. No.

14 Q. Do you recall a lawyer calling you and you
15 talking to a lawyer about Thomas Olivas?

16 A. I can't recall.

17 THE COURT: Just so I'm clear, does that
18 question refer to the timeframe between the two recorded
19 video interviews?

20 MS. KEENE: Yes, sir.

21 THE COURT: All right. Did you understand
22 the question that way?

23 THE WITNESS: Yes.

24 THE COURT: All right. You may continue.

25 Q. (BY MS. KEENE) Do you recall on one of these

1 interviews, and I'll look it up and figure out which one
2 it was, but I believe it was with Margie Campos, telling
3 her that you had talked to a lawyer of Thomas'?

4 A. I can't recall but -- I just can't recall.

5 Q. Okay. So you don't have any memory of a lawyer
6 calling you and telling you not to talk to Thomas?

7 A. No, I do not.

8 Q. Or a memory of a lawyer telling you that Thomas
9 was invoking his Fifth Amendment rights from that day
10 forward?

11 A. I don't recall.

12 Q. Would you have written that down if that
13 conversation took place, or possibly, or not?

14 A. It depends on where I was at the time. It could
15 have been on my cell phone. You know, it just depends.

16 Q. Okay. So if he called you on your cell phone and
17 you're working another case, it may not be something
18 that ended up getting in your file?

19 A. Yeah. It depends on where I was at the time.

20 Q. And you just don't recall if you had a
21 conversation with another lawyer?

22 A. I just can't remember, but that doesn't mean it
23 didn't or did occur.

24 Q. Okay.

25 MS. KEENE: I'll pass the witness, Judge.

1 MR. ROUSSEAU: Just a few more questions,
2 Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. ROUSSEAU:

5 Q. First of all, let's make clear what we're talking
6 about --

7 MR. ROUSSEAU: And, Your Honor, this is as
8 much for the record as anything else. The term "first
9 and second interview" have been tossed around here quite
10 a bit. Let's make clear for the record, there was a
11 single, unitary interview done on March the 22nd (sic)
12 of 2011. It was long and it takes up two discs, and so
13 we have two discs and two transcripts to go with those
14 discs but it's a single interview.

15 THE COURT: And the way that's been pitched,
16 probably the record is better discussing the "Grapevine
17 interview" or the "Arlington interview", the "pre-arrest
18 interview" or the "post-arrest interview". That's
19 probably better terminology. And, in fact, on the end
20 of one of the discs there's a part that says, "The disc
21 is going to be empty. We need to stop and put in a new
22 disc." I think the transcripts are clear. They have
23 two interviews identified on two separate dates. But
24 two discs, one interview, one on the other, I can see
25 how that can be confusing.

1 MR. ROUSSEAU: My partner just told me that
2 I said March 22nd. I meant to say March 21st.

3 THE COURT: I think the dates are written on
4 the face of the transcripts and the DVDs and in
5 testimony. And on the face of the exhibits it says this
6 is what the date is.

7 You may continue.

8 Q. (BY MR. ROUSSEAU) All right. Just to clarify a
9 couple of things. Let's look at the first transcript,
10 the first portion of the March 21st interview. When you
11 are discussing with the Defendant, when he first says
12 something about the car -- you ask him about consent to
13 search the apartment and consent to search the car. Do
14 you recall that?

15 A. Yes, sir.

16 Q. That's going to be on page two occupying
17 basically the top half of the page. Were you on the
18 telephone at that time?

19 A. Yes, I was.

20 Q. So when you're -- a part of the -- your words
21 spoken on this page, you're actually speaking to someone
22 on the telephone, correct?

23 A. Yes, I am.

24 Q. So when you ask him about the car, were you at
25 the same time talking to someone on the telephone who

1 was actually present at the apartment complex with the
2 car?

3 A. That's correct.

4 Q. Was that person asking you if they had consent to
5 search the car?

6 A. Yes, they were.

7 Q. Okay. So they weren't going to search the car
8 until they had consent, correct?

9 A. That's correct.

10 Q. And is that when you asked him if he'd given
11 consent to search the car?

12 A. That's correct.

13 Q. Because you'd been in the room for all of three
14 or four minutes at that time, right?

15 A. That's correct.

16 Q. And these things were happening before you ever
17 arrived in the room, correct?

18 A. That's correct.

19 Q. So in asking him these questions, at the same
20 time that you're on the phone, are you trying to assess
21 what the status of the situation is right then?

22 A. I am.

23 Q. Okay. And so when he said something about the
24 car, not giving permission to search the car, is that
25 when you essentially said, "We'll get to that later,"

1 and you're talking to the person on the phone as well as
2 Thomas?

3 A. That's correct.

4 Q. Thank you.

5 Talking about his initial reluctance to
6 remove his shirt. When he would say he didn't want to
7 pull off his shirt, did he give you several reasons at
8 various times as to why he didn't want to take off his
9 shirt?

10 A. Yes, he did.

11 Q. They included, first of all, he had scratches on
12 him that he thought might make him look guilty, correct?

13 A. That's correct.

14 Q. So did you attempt to address that concern of
15 his?

16 A. I did.

17 Q. Later did he indicate to you that he had --
18 because he claims that he suffers from eczema was one of
19 his concerns regarding the appearance of his torso?

20 A. That's correct.

21 Q. That is, it was just embarrassing; is that
22 correct?

23 A. That's correct.

24 Q. So did you attempt to address that concern?

25 A. I did.

1 Q. Okay. And later did he say that he didn't want
2 to take off his shirt because of the discomfort, that he
3 immediately goes into -- his skin starts to revolt and
4 it itches like crazy the second it's exposed to air, did
5 he say something along those lines?

6 A. Yes, he did.

7 Q. Okay. Did you attempt to address those concerns
8 by saying, "We'll be quick"?

9 A. I did.

10 Q. Okay. So as opposed to him just flatly saying,
11 "No, I'm not going to do it," he would say, "No, and..."
12 this is why, correct?

13 A. Correct.

14 Q. And then you would attempt to address those
15 concerns?

16 A. That's correct.

17 Q. Because you did want the photographs, right?

18 A. I did.

19 Q. While the time -- during the time that you were
20 there with Mr. Olivas at Grapevine PD, was he ever
21 formally placed under arrest?

22 A. No, he was not.

23 Q. Was he under arrest -- when you left the
24 Grapevine Police Department that night was Mr. Olivas
25 under arrest?

1 A. No, he wasn't.

2 Q. Do you know how Mr. Olivas -- well, was he put in
3 jail that night?

4 A. No, he was not.

5 Q. Did you make any requests about -- concerning
6 getting him back to his apartment?

7 A. Yes.

8 Q. Tell us about that.

9 A. I inquired the Grapevine officers that someone
10 get him back to his apartment.

11 Q. And during the course of the interview had
12 Detective Easley, or the Defendant himself -- and I
13 apologize, I can't remember which -- at one point in
14 time indicate that some of Mr. Olivas' property was
15 actually in their car, the car belonging to the
16 Grapevine Police Department?

17 A. Yes.

18 Q. You didn't have it?

19 A. No, I did not.

20 Q. Okay. Was this in the context of talking about
21 how he'd gotten there in the first place?

22 A. Yes.

23 Q. So you made a request that somebody take him
24 home, correct?

25 A. That's correct.

1 Q. When you left -- then you left, right?

2 A. Yes.

3 Q. Do you know how he actually got home that night?

4 A. I don't know exactly how, but I would assume
5 through Grapevine Police Department.

6 Q. It was somebody, somebody that wasn't you,
7 correct?

8 A. Yes.

9 Q. Do you have an understanding one way or another
10 about whether he was in fact taken back to his house
11 that night?

12 A. Yes.

13 Q. What is that understanding?

14 A. That he was taken back.

15 Q. You just don't know how?

16 A. No.

17 Q. Okay.

18 MR. ROUSSEAU: I'll pass the witness.

19 MS. KEENE: I have no questions, Judge.

20 THE COURT: All right. May the witness be
21 excused for now?

22 MS. KEENE: He may.

23 MR. ROUSSEAU: Yes, Your Honor.

24 THE COURT: All right. You're excused
25 subject to witness rules.

1 (Witness excused from courtroom)

2 MR. ROUSSEAU: Detective Easley.

3 (Witness takes the stand)

4 THE COURT: State your full, legal name
5 again for the court reporter.

6 THE WITNESS: Daniel Wade Easley.

7 THE COURT: Who was sworn before we started.
8 State may proceed.

9 DETECTIVE DANIEL EASLEY,
10 having been first duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ROUSSEAU:

13 Q. Detective Easley, you're with the Grapevine
14 Police Department; is that correct?

15 A. Yes, sir.

16 Q. And how long have you been with the Grapevine PD?

17 A. Since 1999.

18 Q. Coming up on 15 years now?

19 A. Yes, sir -- actually, I'm sorry, I've been a
20 police officer since 1999. I've been at Grapevine since
21 2002.

22 Q. We're not going to reinvent the wheel here so let
23 me just kind of jump to the chase.

24 Were you requested to assist -- on March
25 21st, 2011, were you requested to give some assistance

1 to the Arlington Police Department in connection with a
2 homicide that occurred in their city?

3 A. Yes, sir.

4 Q. And what is the first thing you did, sir?

5 A. From what I recall, I responded to 601 Park, I
6 believe, to watch the residence of the suspect, or the
7 person of interest.

8 Q. Did you have a name for that person of interest
9 at that time?

10 A. Yes. As I was responding out there, I was told
11 that I'd be looking for Thomas Olivas and a picture was
12 given to me.

13 Q. And I think -- you and I discussed this last
14 night, correct?

15 A. Yes, sir.

16 Q. Do you recall whether or not you got a -- whether
17 that picture was given to you electronically?

18 A. I believe it was, yes, sir.

19 Q. In any event you had a photograph of Mr. Olivas,
20 at least the person that you were anticipating, that you
21 were looking for?

22 A. Yes, sir.

23 Q. Okay. And about what time of the day did you get
24 to his apartment?

25 A. From what I recall and without looking --

1 Q. Feel free to look at your report if it will help
2 you.

3 A. It was about 8:30, is about when I was told to go
4 out and help, so somewhere around 8:30 in the morning.

5 Q. Were there other officers on the scene, as well?

6 A. Yes, sir. Other officers had been sent out
7 earlier to do other tasks so...

8 Q. At some point in time did you become aware that
9 Mr. Olivas was expected there shortly?

10 A. Yes. I had been informed by two Arlington
11 detectives that they believed he was en route to the
12 location I was at, the residence.

13 THE COURT: All right. Time out.

14 (Discussion off the record)

15 THE COURT: You may continue.

16 Q. (BY MR. ROUSSEAU) At some point, anyway, you got
17 word that he was on his way home?

18 A. Yes, sir.

19 Q. And 601 Park Boulevard, is that an apartment
20 complex?

21 A. Yes, sir.

22 Q. Was there a specific apartment that you were
23 setting up on?

24 A. Yes, sir. It was Apartment 208.

25 Q. And did you witness a vehicle drive into the

1 parking lot that you had come to associate with this
2 person?

3 A. Yes.

4 Q. And was it a dark green Ford Explorer?

5 A. Yes, sir.

6 Q. Did the person get out of the car and proceed to
7 walk toward their apartment or --

8 A. Yes.

9 Q. -- toward his apartment?

10 A. Yes.

11 Q. Okay. And did you make contact with him?

12 A. Yes.

13 Q. About what time of day was this?

14 A. About 3:20, a little after 3:20 in the afternoon.

15 Q. Around 3:20 is when you got word he was on the
16 way, correct?

17 A. Yes.

18 Q. And it was shortly after that?

19 A. Yes.

20 Q. The person that you made contact with there in
21 the parking lot, do you see him present here in the
22 courtroom?

23 A. Yes.

24 Q. Could you point him out and describe some article
25 of clothing, please.

1 A. Yes, sir. He's sitting over to my left wearing a
2 red shirt.

3 MR. ROUSSEAU: Your Honor, may the record
4 reflect the witness identified the Defendant?

5 THE COURT: It may for purposes of this
6 hearing.

7 Q. (BY MR. ROUSSEAU) When you made contact with
8 him, initially, when you first made contact with him,
9 was anyone with you?

10 A. Yes.

11 Q. Okay. Who was with you when you made contact
12 with the Defendant?

13 A. Initially there was another detective from
14 Grapevine Police Department, her name was Detective
15 Rebecca Graves, and followed up very shortly by the two
16 Arlington detectives.

17 Q. So the two of you approached him together?

18 A. Yes, sir.

19 Q. How were you dressed?

20 A. In a dress shirt, slacks, very similar to how I'm
21 dressed now without the sport coat, wearing a badge and
22 a firearm, handcuffs, magazine, things of that nature.

23 Q. You were not in uniform?

24 A. No, sir.

25 Q. Were you driving a marked police unit?

1 A. No, sir.

2 Q. Was Detective Graves?

3 A. No, sir.

4 Q. So she was dressed similar to you?

5 A. Yes.

6 Q. Okay. Did you identify yourself as a police
7 officer?

8 A. Yes.

9 Q. Did you tell him anything about why it was that
10 you were there to talk to him?

11 A. No, sir.

12 Q. Did you know anything about the details of the
13 offense?

14 A. Not at this time, sir.

15 Q. You subsequently found out, though?

16 A. Yes.

17 Q. You said that you were joined shortly after that
18 by a couple of Arlington police detectives; is that
19 correct?

20 A. Yes.

21 Q. What is shortly after that? Give us some
22 approximation of the elapsed time between you making
23 contact and then the Arlington people showing up.

24 A. No more than probably four minutes or so, two to
25 four minutes.

1 Q. Okay. Did the Defendant -- well, did you arrest
2 him?

3 A. No, sir.

4 Q. Did he make any comments to you while you were
5 standing there waiting for Arlington police to show up?

6 A. Yes. A comment that I noted, which I thought was
7 a little odd, he had made a comment. And I'll have
8 to -- he asked if we could go inside before his
9 neighbors think that he killed Rebeca and his daughter,
10 and I noted that in my report.

11 Q. I want to jump ahead a little bit in the story.
12 You later sat in on an interview with the Defendant; is
13 that correct?

14 A. Yes, sir.

15 Q. And he clarified that comment in some fashion,
16 correct?

17 A. Yes. He said that if he had known the
18 circumstances of the investigation, he wouldn't have
19 made that comment.

20 Q. Okay. Did you ask the Defendant what time he had
21 left for work that morning?

22 A. Yes. At some point I had asked him -- I remember
23 in my report I noted he indicated he left for Best Buy
24 between 8:30 and 8:45 in the morning.

25 Q. Now, do you recall whether or not that -- and I'm

1 looking at your report just like you're looking at your
2 report. Do you recall whether -- that back-and-forth
3 between you and him regarding what time he left for
4 work, do you recall whether that happened there in the
5 parking lot or was it later during the interview, do you
6 know?

7 A. I don't recall.

8 Q. Okay. You wrote this report when?

9 A. It would have been that evening or possibly early
10 the next day.

11 Q. Did you provide the Defendant a ride down to the
12 Grapevine Police Department?

13 A. Yes, sir.

14 Q. And about what time was that?

15 A. About 3:45 in the afternoon, is what I noted in
16 the report.

17 Q. So he had gotten home shortly after 3:20 in the
18 afternoon and by 3:45 -- or around 3:45 in the afternoon
19 you were headed to the Grapevine Police Department with
20 him?

21 A. Yes.

22 Q. Was he in custody?

23 A. No, sir.

24 Q. Did you tell him he had to go?

25 A. No, sir.

1 Q. Was anyone else in the car with you other than
2 the Defendant?

3 A. I don't believe so. I believe, actually, I may
4 have transported him myself. I don't know for certain.
5 If there was anybody else in the car -- there may have
6 been another detective, only so she could get to the
7 police department, but not that I recall.

8 Q. Assuming it was just you and the Defendant, or I
9 guess even if there had been another police officer with
10 you, where would the Defendant have sat in the car?

11 A. I believe, and I don't recall for certain, but I
12 believe he sat in the passenger seat of the car.

13 Q. Front seat?

14 A. Yes.

15 Q. If you have someone in custody, where do they
16 seat?

17 A. In the backseat.

18 Q. Did you -- during the course of the interview
19 that later took place with Detective Stewart did you
20 obtain written consents from the Defendant and actually
21 collect some samples, say, for example, a buccal swab
22 and swabs from his hands, that sort of thing?

23 A. Yes, sir.

24 Q. And I am not going to go over it in great detail.
25 We have the video. We've seen those. But you are the

1 one that actually collected those items; is that
2 correct?

3 A. Yes, sir.

4 Q. All right. I want to move ahead a little bit.
5 I've already mentioned the fact that you took part in an
6 interview. This was not a Grapevine case, right?

7 A. Correct.

8 Q. You were there I guess more as a courtesy; is
9 that right?

10 A. Correct.

11 Q. I want to ask you -- when I say courtesy, I
12 guess, I mean courtesy to whom?

13 A. Arlington Police Department.

14 Q. While you were in the presence of the Defendant,
15 did anyone threaten him?

16 A. No, sir.

17 Q. Did anyone harm him in any way?

18 A. No.

19 Q. Did anyone -- was he ever placed in handcuffs?

20 A. No, sir.

21 Q. Was he ever restrained in any way?

22 A. No, sir.

23 Q. We have the video, of course, and we've seen the
24 Defendant sitting alone in a room prior to Detective
25 Stewart's arrival?

1 A. Yes.

2 Q. And he's in that room alone; is that correct?

3 A. Yes.

4 Q. Do you recall if the door was open or closed to
5 that room?

6 A. The door, right before the interview started the
7 door remained open.

8 Q. Tell us about what's outside that door.

9 A. There's an office -- well, there's a series of
10 offices. The most immediate office belongs to our
11 investigative assistant.

12 Q. Investigative assistant, so is that a male or
13 female?

14 A. Female.

15 Q. Is she a police officer?

16 A. No.

17 Q. Does she wear a police officer's uniform?

18 A. No.

19 Q. Does she wear a firearm?

20 A. No.

21 Q. Was there -- in addition to her, was there a
22 police officer setting up on that door to make sure he
23 didn't leave?

24 A. No, sir.

25 Q. At various times during the -- or at least at

1 some point in time during the interview during a break
2 does the Defendant get up and wonder out of the room?

3 A. Possibly. I don't recall exactly.

4 Q. All right. And I don't know if you watched that
5 portion of the interview or not.

6 A. Not that I recall, watching that portion of the
7 video, that is.

8 Q. Was he deprived of water? Did he have water
9 while he was there?

10 A. Yes.

11 Q. Okay. Was he offered a chance to go to the
12 restroom?

13 A. Yes.

14 Q. There is -- do you have -- did I give you a copy
15 of the transcript when we met last night?

16 A. Yes, sir.

17 Q. Okay. Do you have it with you?

18 A. Yes.

19 Q. The part that I'm asking you about is going to be
20 in the second -- there's two portions of the transcript,
21 part one and part two. I want to turn your attention to
22 part two. Okay?

23 A. Okay.

24 Q. It's going to be page -- I think I'm correct.
25 Let's go to page 12. I may -- I'll just point out to

1 you what I'm talking about. It will save us a lot of
2 back and forth. Let me see yours.

3 Okay. You've made some corrections,
4 correct?

5 A. Yes, sir.

6 Q. All right. Then that's what I want to ask you
7 about. This is in -- follows a portion of the interview
8 regarding him giving some consent and I believe it's
9 consent regarding the search of the vehicle. I may be
10 wrong about that. I apologize if I am. But the
11 transcript right after Detective Stewart leaves the room
12 to take a phone call --

13 A. Yes.

14 Q. -- okay?

15 The transcript says -- and where it says
16 "E", that's "Easley" for you, correct?

17 A. Correct.

18 Q. Okay. "E", here it says that you say,
19 "Actually -- "I'll actually get this consent -- "I will
20 actually -- "Actually, I can go get the search warrant,"
21 correct, that's what it says in the typed words?

22 A. Yes, sir.

23 Q. We were listening to this last night, correct?

24 A. Yes, sir.

25 Q. Did you hear something different than that?

1 A. Yes, sir.

2 Q. What did you actually say right there at line 11?

3 A. What it sounded more like to me was "Actually, I
4 can go get the consent to search form."

5 Q. And did you in fact go get a consent to search
6 form immediately following that?

7 A. Yes. I had the consent to search form on the
8 video. I had the consent to search form on like a book
9 or a binder or something.

10 Q. And do you just -- does he in fact give him
11 instructions, a few lines down, regarding where to sign
12 and how to indicate that he is giving his consent?

13 A. Yes.

14 Q. And did you make a time reference so that you
15 could write it on that consent to search form?

16 A. Yes.

17 Q. Look at line 25.

18 A. Yes, sir.

19 Q. And what is the time reference:

20 A. "It is now 6:08."

21 Q. So that is from line 11 down to line 25, correct?

22 A. Yes, sir.

23 Q. Had there been any conversation between you and
24 the Defendant or Detective Stewart about you going and
25 getting a search warrant at that point in time?

1 A. No, sir.

2 Q. Was there ever a conversation about a search
3 warrant at all?

4 A. No, sir.

5 Q. All right. During the interview the Defendant
6 did provide, several times provided, consent to search
7 the apartment, for one, right?

8 A. Yes, sir.

9 Q. He gave consent to search -- ultimately gave his
10 consent to search the Ford Explorer, correct?

11 A. Yes.

12 Q. Gave his consent to search, to search, that is,
13 to take photographs of his body, his tattoos on his arms
14 and, finally, of his torso, correct?

15 A. Yes.

16 Q. He gave consent to obtain the contents of his
17 iPhone, correct?

18 A. Yes.

19 Q. And I may be leaving something out. Were all of
20 those consents given voluntarily?

21 A. Yes, sir.

22 Q. Were you present when he was warned of his
23 constitutional rights, rights under the -- the Miranda
24 warnings, as well as the rights under 38.22 of the Code
25 of Criminal Procedure?

1 A. Yes, sir.

2 Q. And did he appear to you to understand those
3 rights?

4 A. Yes.

5 Q. Did he waive each and every one of those rights?

6 A. Yes.

7 Q. Did he give these consents freely and
8 voluntarily?

9 A. Yes, sir.

10 Q. Was there ever any concern -- did you ever have
11 any concern about the Defendant's ability to understand
12 what was going on in that room?

13 A. No, sir.

14 Q. Did he strike you as an intelligent person?

15 A. Yes.

16 Q. Articulate?

17 A. Yes.

18 Q. Able to express his thoughts?

19 A. Yes.

20 Q. Able to understand what was being communicated to
21 him?

22 A. Yes.

23 Q. Did you ever hear him flatly say, "I will not
24 give my consent" for any of these items?

25 A. No.

1 Q. When he was talking about -- when -- did he show
2 a reluctance, though, to allow you to photograph his
3 torso?

4 A. Yes.

5 Q. Did he provide reasons for his reluctance?

6 A. Yes.

7 Q. That is, he has eczema?

8 A. Yes.

9 Q. And he also has scratches that he didn't want
10 anyone to see?

11 A. Correct.

12 Q. Okay. Did you and Detective Stewart attempt to
13 address those concerns with him?

14 A. Yes.

15 Q. Did you ever make him any promises regarding
16 him -- in order to obtain his consent?

17 A. Promised we wouldn't publish the pictures or show
18 anybody the pictures, things of that nature, but other
19 than that, no.

20 Q. Okay. And that was to address his concerns about
21 the way the eczema looks?

22 A. Yes.

23 Q. Did you ever tell him that if he didn't allow
24 these photographs or this consent to search this car he
25 would be arrested?

1 A. No.

2 Q. He ultimately was not arrested; is that correct?

3 A. Correct.

4 Q. He did provide during the interview his jacket
5 and some shoes; is that correct?

6 A. Yes.

7 Q. Do you know how the Defendant got back to his
8 apartment that night?

9 A. No.

10 Q. Is that something that we have asked you to try
11 to ascertain for us?

12 A. Yes.

13 Q. Have you had any luck?

14 A. No, sir.

15 Q. Can you tell us whether or not he was locked up
16 in jail that night?

17 A. He was not.

18 Q. He was free to go?

19 A. Yes.

20 Q. If you would, please, look on the same transcript
21 we're talking about there. Look at page eight, line --
22 well, let's just look at line 16. He has just been --
23 Detective Stewart has just told him that he, Detective
24 Stewart, will need consent in order to take these
25 photographs. You see where the Defendant states,

1 "Actually, on that one, I'm not... It's just one of
2 those things, uh, not yet, no"?

3 A. Yes.

4 Q. So he says, "Not yet, no," correct?

5 A. Correct.

6 Q. All right. And y'all continue to talk to him to
7 attempt to obtain a consent, correct?

8 A. Yes.

9 Q. That is all I have for now.

10 MR. ROUSSEAU: I will pass the witness.

11 CROSS-EXAMINATION

12 BY MS. KEENE:

13 Q. Let's just hit this first. If you flip over to
14 page nine, at the very top, were you present when, and
15 it may have been Detective Stewart, says, "How about
16 with that shirt off? Would you let me take pictures,"
17 and he says, "No." Is that correct?

18 A. Yes.

19 Q. And you were present whenever he said that,
20 correct?

21 A. Yes.

22 Q. There was no hesitation or ambiguity in his
23 answer at that point, was there?

24 A. Not that I recall.

25 Q. In fact, he just said "no". He said "yes" to a

1 lot of different pictures, but this is the particular
2 picture that he said "no" to; is that correct?

3 A. Yes.

4 Q. And then it was -- that's fine. That's enough.

5 So whenever you were sent out to his house,
6 his apartment, how long had you been there before he
7 arrived?

8 A. Quite a while. I'd been told to go out at about
9 8:30 and it was about -- it was a little bit after 3:20.

10 Q. So you're out there six, seven hours, eight
11 hours?

12 A. Yes.

13 Q. And whenever he arrives at 3:30ish in the
14 afternoon, how many police officers were out there?

15 A. Oh, I don't know for certain. We had taken
16 shifts. Our criminal investigations units had taken
17 shifts in watching the residence. There had been patrol
18 officers that had come and gone. At that particular
19 time only two people that I can absolutely attest to
20 being there were Mr. Detective Graves and myself.

21 Q. Detective Graves?

22 A. Yes.

23 Q. And you?

24 A. Yes. Detective Rebecca Graves.

25 Q. You don't remember any other Grapevine police

1 officers that were there, period?

2 A. Not at the time that --

3 Q. That he arrives?

4 A. -- we made contact with Mr. --

5 Q. Correct.

6 A. -- Olivas.

7 Yes.

8 Q. There were two Arlington police detectives that
9 came prior to Thomas right before he pulls up?

10 A. They came somewhere around the time that he
11 showed up. I don't know if it was just prior to him
12 showing up or if it was just after. I believe it was
13 just after. I know they walked up after we had made
14 contact with Mr. Olivas.

15 Q. How did you know? Did somebody inform you he was
16 on his way home or he's about to be there?

17 A. Yes.

18 Q. And were there police officers following him from
19 Best Buy to his residence?

20 A. I don't know if they were following him. I know
21 that they'd said that they believed he had just left
22 Best Buy in a green SUV.

23 Q. And about how much time after, when they told you
24 that, did he arrive at his apartment?

25 A. It wasn't very long at all.

1 Q. It's not a very long commute, is it?

2 A. No, ma'am.

3 Q. So five minutes or less, basically?

4 A. Yes.

5 Q. And then here comes the green SUV that you were
6 told that he'd be driving?

7 A. Correct.

8 Q. How many police officers total were there
9 whenever he gets out of the SUV and is confronted?

10 A. There was only two of us that approached him and
11 confronted him originally.

12 Q. And then how many total, before you guys leave,
13 police officers are there?

14 A. There were two Grapevine and I believe just the
15 two Arlington. I don't recall if anybody else showed up
16 or at all.

17 Q. So four officers total including yourself?

18 A. Yes, four. Yes.

19 Q. Each of the police officers are in plainclothes?

20 A. Yes, ma'am.

21 Q. Was it apparent, though, that -- you stated
22 that -- let me start over.

23 You stated that Thomas said, "Can I go
24 inside before the neighbors think I killed Rebeca and my
25 daughter?" Is that correct?

1 A. Yes.

2 Q. Is that when y'all are outside in the parking lot
3 area?

4 A. Yes.

5 Q. Was it apparent that he's been talked to by a
6 number of police officers?

7 A. Yes.

8 Q. Give me an idea, or give us an idea, of what that
9 looks like or why you'd think, "I'm going to go in. My
10 neighbors are going to be wondering what I did"?

11 A. I can see where -- well, not real sure exactly
12 what you're asking me. If you're asking me to paint the
13 picture --

14 Q. Paint the picture, yes.

15 A. There were four individuals standing around
16 Mr. Olivas, talking. I know at least two of us, it was
17 apparent that we were police officers because we had
18 identification on our belt. The Arlington detectives, I
19 don't recall if their identification was as obvious or
20 not, but, yes, four people standing in the parking lot
21 talking to him, obviously two of them being officials.

22 Q. And were y'all surrounding him or just talking to
23 him face-to-face?

24 A. I was just talking to him face-to-face.

25 Q. If he took off running, then you would be able to

1 stop him. He was that close?

2 A. If he took off running, I would not have chased
3 him. I don't have a reason really to chase him other
4 than to try to identify him, talk to him, what have you,
5 if that's what you're asking.

6 Q. No, but that's okay. How close are you to him?

7 A. Well, I don't recall. Generally I try to stay a
8 safe distance away from somebody. Probably maybe five
9 feet.

10 THE COURT: Point in here how far away.
11 Relative to you and the court reporter, close or same
12 or --

13 THE WITNESS: Probably a little bit closer.
14 Maybe just about the same distance. Maybe just a little
15 bit closer.

16 Q. (BY MS. KEENE) And the other police officers,
17 are they about the same distance? Are they with you?
18 Are they behind him?

19 A. Honestly I don't recall where they were standing.

20 Q. Okay. But there were four police officers, one
21 female and three males, talking to Thomas?

22 A. Yes.

23 Q. And was any of this conversation recorded in any
24 manner?

25 A. Not that I'm aware of.

1 Q. About how long was that conversation?

2 A. It was very short.

3 Q. And in the conversation, the only thing Thomas
4 said is, "Can I go inside before the neighbors,"
5 basically, "think I killed my wife and kiddo?"

6 A. That was the only notable thing that I recall.
7 There may have been other conversation, but it wasn't
8 anything -- I don't want to say anything of any
9 consequence, but it wasn't anything about -- relative to
10 the case or the investigation.

11 Q. Is there any discussion about why you are there?

12 A. Not that I recall. I remember thinking I didn't
13 want -- being that I didn't know anything about the
14 investigation, I didn't want to talk to him and tell him
15 exactly what was going on because I didn't know for
16 certain exactly how he was being implicated in the case.

17 Q. All right. Thomas gets out of his car. How is
18 he approached, by two, you said, police officers?

19 A. Yes.

20 Q. And you're one of them?

21 A. Yes.

22 Q. So what do you say? Just approach a citizen and
23 say, "Can you come down to the Grapevine Police
24 Department with me," or how does that take place?

25 A. From what I recall, and I don't remember exactly

1 how I said it, I do remember walking towards him as he
2 was walking -- because his vehicle was actually parked
3 quite aways away and he started walking so I had plenty
4 of time to tell the other detective, "Hey, this looks
5 like him walking to us now." I get out the car and I
6 approach him in the parking lot. I just said, "Hey, I'm
7 Officer Easley with the Grapevine Police Department.
8 Would it be okay if we talk?" It would have been
9 something along those lines.

10 Q. Okay. And then he says something like "yes"?

11 A. Yes.

12 Q. And then now you've got four of you that -- two
13 more approach, correct?

14 A. A total of three more. Myself and then three
15 more approach -- or two more.

16 Q. So four of y'all talking?

17 A. Yes.

18 Q. But what is being said?

19 A. I don't recall. I don't recall what was exactly
20 said.

21 Q. How is he convinced by these four police officers
22 to go get in the car with one of them?

23 A. From what I recall, we just asked him if he would
24 be willing to come in and talk to us. I don't recall if
25 we even told him why. We may have. Somebody may have,

1 but I don't recall if we did or not.

2 Q. Like someone may have said something like, what,
3 like "there's a double homicide" or "there's a fire," or
4 do you have any memory? You're the one that was out
5 there.

6 A. There may have been some mention of "have you
7 heard of the homicide in Arlington". May have been.
8 Like I said, I don't recall.

9 Q. What you don't recall is him saying anything that
10 jogged your -- that you remember of implicating himself
11 in this?

12 A. No, not at all.

13 Q. You certainly don't remember him saying anything
14 that stood out to you to be "I might need to make a note
15 of that," except for this "Can we go inside before the
16 neighbors think I killed Rebeca and my daughter"?

17 A. Yes.

18 Q. That's the only thing you heard him say out there
19 that caused you to think "I need to make note of that"?

20 A. Yes.

21 Q. Anything else he said that would have been, in
22 your opinion, something a normal person would have said
23 when four police officers approached them?

24 A. Yes.

25 Q. Okay. This was the only thing that he said that

1 stood out to you?

2 A. Correct.

3 Q. Okay. And then about how long is the
4 conversation that y'all have out there before he gets in
5 your car?

6 A. I don't remember exactly. I know from reviewing
7 the CAD times and the time that I estimated that we made
8 contact with him, there wasn't very many minutes between
9 those two times, and that's also going to include
10 getting into the car and things of that nature. So I
11 would estimate no more than ten minutes of talking
12 and/or silence.

13 Q. And so in the ten minutes after talking to him,
14 he then voluntarily says he'll come to the police
15 department?

16 A. Yes.

17 Q. How come he didn't drive his own car and follow
18 you?

19 A. I don't recall why that wasn't allowed, other
20 than I know Arlington was interested in the vehicle.

21 Q. Arlington didn't want any evidence that possibly
22 was in the vehicle to be contaminated; is that fair?

23 A. Yes.

24 Q. So it would be at least in Arlington's best
25 interest for him to get in your car and for the vehicle

1 that he drove to be left right there; is that correct?

2 A. Yes.

3 Q. And, actually, y'all put a guard on that vehicle,
4 or a police officer, to watch the vehicle?

5 A. I don't -- we may have.

6 Q. All right. So once you get him into your car --
7 and you said he sat in your front seat?

8 A. I believe so, yes.

9 Q. And how long did it take to drive him to the
10 police station?

11 A. It wouldn't have taken very long. Maybe five
12 minutes, seven minutes.

13 Q. Was he told in all this that he didn't have to
14 go?

15 A. I don't recall if I said that for certain. I
16 know my usual routine, being that this wasn't my first
17 investigation, is to repeatedly reiterate that they're
18 allowed to go, to ensure that they understand that, you
19 know, this is completely their decision and they can
20 leave at any time. I would imagine that was probably
21 brought up, but being that I didn't record it, I don't
22 know for certain.

23 Q. What you do know is you asked him to come and he
24 came?

25 A. Yes.

1 Q. You don't know whether or not you said, "You
2 don't have to come," because you don't have a memory of
3 that, correct?

4 A. Correct.

5 Q. And so when he came, it's about a five-minute,
6 ten-minute? How long does it take in a car to get to
7 the police station?

8 A. Five to seven minutes.

9 Q. And is any of that recorded?

10 A. We do. I believe I did check out on the radio
11 with our dispatch that we were en route to the police
12 department. And I believe I checked in that we were --
13 we had arrived at the police department. It should all
14 be covered in our CAD system.

15 Q. I mean as far as video or audio recording of that
16 drive.

17 A. No. I was in an unmarked criminal investigations
18 car. It's not equipped with cameras.

19 Q. And was there any sort of conversation in the car
20 driving there between you and Thomas?

21 A. Not memorable conversation.

22 Q. "Not memorable" meaning you just don't remember?

23 A. Correct.

24 Q. But it was certainly nothing like a confession?

25 A. True.

1 Q. Okay. Because you would have made note of that?

2 A. Yes.

3 Q. And there was no discussion about this offense in
4 the car?

5 A. No.

6 Q. Whatever the discussion was, it would have
7 been -- it was insignificant and you didn't put it in
8 your report?

9 A. Correct.

10 Q. Or you guys just sat silently and drove all the
11 way there?

12 A. Possibly.

13 Q. Once you arrive at Grapevine, do you actually
14 drive up to the front and you guys get out, or do you go
15 like into a sally port?

16 A. We have an entrance close to our interview rooms
17 in our criminal investigations division. So we would
18 have parked in the back and walked through a back door
19 into the police department. I say back door. Our
20 police department is actually very confusing because
21 it's got a lobby that goes all the way through the
22 building, so the front and back are often confused for
23 each other. There's a main entrance in both the front
24 and back.

25 Q. Once he gets inside the police department where

1 do you take him?

2 A. Into one of the interview rooms.

3 Q. And is he sat inside the interview room?

4 A. Yes, he's sat in the interview room.

5 Q. And how much time after he's sat in the interview
6 room is the recording started?

7 A. It wouldn't have been very long. We try to get
8 the recording started as soon as we possibly can.

9 Q. And was he free to leave at that point?

10 A. Yes.

11 Q. Had he got up and just walked out, could he have
12 done that by himself?

13 A. Yes. He could have come out the same entrance we
14 went in.

15 Q. Whenever -- there's one time that he does leave.
16 Whenever he's given an interview, he gets to go smoke a
17 cigarette. Do you recall that?

18 A. No, I don't.

19 Q. When he left he was -- a police officer went with
20 him to go smoke a cigarette. Would that be standard?

21 A. If he had gone outside the building through the
22 entrance that we came in, he would not have been able to
23 come back. It's restricted access coming into the
24 building. Free access flowing out; restricted access
25 coming back in. So it would not have been uncommon for

1 an officer to go with them just to make sure that they
2 could get back into the building to where they were
3 sitting.

4 Q. So it wouldn't surprise you at all to hear that a
5 police officer went out with him to smoke a cigarette?

6 A. No, it would not.

7 Q. Because that's the only way you could get back
8 in, if you went outside?

9 A. True.

10 Q. Was to have somebody with authority or with the
11 right swipe or key to get back in?

12 A. Yes.

13 Q. But you don't have a specific memory of that
14 happening?

15 A. No.

16 MS. KEENE: Pass the witness.

17 MR. ROUSSEAU: I don't have any further
18 questions, Your Honor.

19 THE COURT: All right. May the witness be
20 excused, at least for now?

21 MS. KEENE: He may, Judge.

22 MR. ROUSSEAU: Yes.

23 THE COURT: All right. Remember your
24 instructions. Remember the witness rule. Thanks for
25 coming in.

1 (Witness excused from courtroom)

2 (Pause in proceedings)

3 THE COURT: All right. Outside the presence
4 of the witness I just re-listened to the audio that's
5 referred to on State's Pretrial 2-A and it's been
6 discussed on line 11, page 12 and it sounds to me like
7 it says, "I can get the consent to search done,"
8 followed by him, "I know you filled out a lot of these,"
9 immediately discussing in the context of the tape. So
10 that's -- as a matter of fact that's what the Court
11 heard and the exhibit will speak for itself.

12 Y'all may continue. Still the State's case.

13 MR. ROUSSEAU: That's all I have at this
14 point, Your Honor.

15 THE COURT: You rest on Defense motion to
16 suppress?

17 MR. ROUSSEAU: Statements of the Defendant,
18 yes, sir.

19 THE COURT: All right. What about evidence,
20 what beyond what's here in evidence...

21 MR. ROUSSEAU: Can we go off the record?

22 THE COURT: Yes.

23 (Discussion off the record)

24 THE COURT: On the record.

25 State rests as to the pretrial Defense

1 motion to suppress?

2 MR. ROUSSEAU: Regarding the Defendant's
3 statements, yes, Your Honor.

4 THE COURT: And the evidence obtained during
5 the course of the interview when the statements were
6 given, particularly those contained in State's Pretrial
7 1 and 2?

8 MR. ROUSSEAU: Yes, Your Honor.

9 THE COURT: All right. And as of now,
10 you've indicated you have no desire, on the issue of, in
11 case-in-chief, to offer State's Exhibit Pretrial 3 based
12 on 38.22 issues, which are still being researched, and
13 you want to withhold any ruling or addressing that issue
14 at this time?

15 MR. ROUSSEAU: Just to be safe, Pretrial 3
16 is the 9/24 arrest interview?

17 MR. MOORE: Yes.

18 MR. ROUSSEAU: Then you're correct, Your
19 Honor.

20 THE COURT: All right. Does the Defense
21 have any evidence you wish to offer on the merits of the
22 motion and matter I just addressed with the State?

23 MS. KEENE: No, sir.

24 THE COURT: Do you rest, as well?

25 MS. KEENE: Yes.

1 THE COURT: All right. Then State waive
2 opening, reserve close?

3 MR. ROUSSEAU: Yes, sir.

4 THE COURT: All right. Then the Defense may
5 close.

6 DEFENDANT'S CLOSING STATEMENT

7 MS. KEENE: Judge, we really have two large
8 issues. One of them being an illegal detention of
9 Thomas Olivas on March the 21st, 2011. What we heard
10 from the detective is that they did not have probable
11 cause to detain him. However, they showed up at his
12 house, four in number, and become such a presence, and
13 they agree that they become such a presence, in the
14 parking lot that he says, "Can we go inside?" But they
15 don't go inside. Instead they say, "Let's come on down
16 to the police department."

17 I would submit to the Court that he does not
18 at this point believe that he's free to just go inside
19 because they said, "No, we'd like you to come to the
20 police department." If four police officers are present
21 outside, wanting to talk to you, how free do you feel
22 like you can say to them, "I don't want to talk to you"?
23 They said they didn't tell him why they wanted to talk
24 to him, but it was such a presence to him that he said,
25 "I don't want my neighbors to think I, you know, killed

1 my wife and kid." So something significant was
2 happening and he could tell it just based on that one
3 statement. So the detective said he did not have
4 probable cause but yet they were able to bring Thomas
5 down to the police station. No one is clear about why
6 Thomas couldn't drive himself down there. Except you
7 can glean from what was happening is they don't want
8 him -- they don't want him anywhere near that truck
9 because they don't want him to contaminate the evidence.
10 They want him in their car and with a perception that he
11 can't, that he's not free to leave, so Thomas then ends
12 up down at the police station without probable cause,
13 not believing that he can just get up and leave.

14 So it would be an illegal detention. And
15 based on that illegal detention, we would argue that all
16 the continuing consents are the fruits of that illegal
17 detention, being the consent to take his buccal swab,
18 consent to take any photographs of his body, period, the
19 consent to -- consent with the car, just the fact that
20 it was even discussed we believe would not be admissible
21 into evidence, and then, of course, the actual statement
22 itself. We would say that those, I think four major
23 items, would be suppressible based upon illegal
24 detention.

25 They also took his clothing he had on that

1 day, so that would be another piece of physical evidence
2 that we would argue would be a fruit of the poisonous
3 tree, as far as the illegal detention, and then, also,
4 anything that came off of his iPhone, because he
5 freely gave them his iPhone and talked about his iPhone.
6 We talked a little bit about it in this hearing. But if
7 the arrest is an arrest and it was not based on probable
8 cause and it was an illegal detention, so to speak, then
9 all of those things would be fruits of the poisonous
10 tree. So basically a ruling on the arrest and then all
11 of the things that came from the arrest we would ask the
12 Court to suppress.

13 And number two is, being just more specific,
14 is this idea of consent. And even assuming that this is
15 not an illegal detention, just looking at what does it
16 mean under the Fourth Amendment, what sort of rights do
17 citizens have. And we know from the Fourth Amendment
18 that a citizen has a right to be free from searches,
19 period, and all the searches are presumed to be
20 unreasonable unless there's a warrant. And we know that
21 the only exception to that is if someone gives their
22 consent. And so when Thomas says, "Yes, I'll give you
23 my iPhone -- he does it very freely and the Court saw it
24 in the videotape -- when Thomas says yes to whatever
25 else it was, "Yes, here's my buccal swab, you can have

1 it," but when they talk to Thomas about his body, he is
2 very clear and he says no. It is not ambiguous. It is
3 not anything. It is "no". So at that moment Thomas
4 invoked his Fourth Amendment right to not -- to be free
5 of an unreasonable search, a search without probable
6 cause. And the police officer, and you heard the police
7 officer, his view of the Fifth Amendment, too, if you
8 say you have a right, "I don't want to talk to you
9 anymore," he can just keep on talking to you and
10 convince you to give up your rights. That's not the
11 law. It's --

12 THE COURT: Well, let me just say, when it's
13 not a custodial interrogation, you don't have to warn
14 someone of their rights. There are some delineations.
15 And it wasn't really clarified with the witness.

16 MS. KEENE: You're correct. You're correct.
17 If he was in custody, maybe he would have had a
18 different answer. Actually, that's a very --

19 THE COURT: Right.

20 MS. KEENE: -- good point, Judge.

21 Certainly the Fourth Amendment doesn't
22 require custodial. You have a right to be free of a
23 search whether you're in custody or not. The police
24 don't have a right to just come up to you and say, "I
25 want all of your stuff," and take it from you. So if

1 you say no, you say, "I am invoking my Fourth Amendment
2 right not to be searched," they need to stop. They have
3 to stop. And so there are a number of cases that I
4 found. Most of them are older because I think this is
5 well-settled law. It says, "This reasoning is equally
6 applicable in using it against a defendant for refusal
7 to consent to entry of their house without a warrant.
8 The right to refuse protects both the innocent and the
9 guilty --

10 THE REPORTER: Could you slow down, please.

11 MS. KEENE: Oh, I'm sorry.

12 -- and to use its exercise against the
13 defendant would be," as the Court stated, "a penalty
14 imposed by the courts for exercising constitutional
15 right." So it's the same idea under the Fourth
16 Amendment as it is under the Fifth. If I say, "I'm
17 going to invoke Fifth Amendment right to remain silent,"
18 you can't bring that in front of a jury and use that as
19 evidence of guilt. And so when Thomas says, "I'm
20 invoking my Fifth Amendment right not to be searched, my
21 body," --

22 THE COURT: You mean his Fourth Amendment
23 right.

24 MS. KEENE: I mean, "my Fourth Amendment
25 right, for my body not to be searched," that can't be

1 brought before the jury, and they're supposed to honor
2 that. He says he honors it, but then we know after
3 20 minutes, ten pages of convincing him, "Oh, don't give
4 up that right," makes it not voluntary. He has invoked
5 his Fourth Amendment right "no". And he's very clear
6 about when he says yes and he's very clear about when he
7 says no. He ultimately concedes because they've
8 badgered him. You watched it. They badgered him about
9 "give us" -- "Come on, what you hiding," basically,
10 "under that shirt?" "What you hiding in that car?" And
11 so to show those conversations to the jury is going to
12 allow them to infer guilt based on him invoking his
13 constitutional rights. And that's what these various
14 court opinions, as well as the constitution, says you
15 can't do.

16 I mean, what kind of a -- I think it says in
17 this one -- I love this language -- "In the case of
18 silence, the prosecutor can argue that if the defendant
19 had nothing to hide, he would not keep silent. In the
20 case of refusal of entry, the prosecutor can argue if
21 the defendant were not trying to hide something or
22 someone, she would have let the officers in. In either
23 case, whether the argument is made or not, the desired
24 inference will be drawn by the jury. This is why the
25 evidence is inadmissible in the case of silence. It's

1 also why the evidence is inadmissible in the case of
2 refusal to let the officers search."

3 And so it is a constitutional right to be
4 free from the search. He did not give his consent
5 voluntarily. In fact, he said no. After 20 minutes or
6 more of them harboring in on him, they convinced him to
7 change his mind. And, Judge, this is the same thing as
8 if he's in custody and he says, "You have a right to
9 remain silent," and I invoke it, they don't get to keep
10 prodding on him, keep talking to him until he finally,
11 "All right. I concede. I'll talk."

12 On the issue of the car, he we would also
13 object to him invoking his right for the car not to be
14 searched and all of that -- tapes in regards to that.

15 THE COURT: Well, and let me just -- to be
16 fair to your record, it seems to me he's invoking
17 Amanda's possible right to object to the car not being
18 searched.

19 MS. KEENE: I believe that that is less
20 clear when he starts but then it becomes more clear that
21 he's talking about there's a smell of gasoline, he
22 doesn't want them to go in there, but, yes, it does
23 appear that he's invoking Amanda's --

24 THE COURT: And he can't be responsible for
25 what she might have in the car. He doesn't --

1 MS. KEENE: Correct.

2 THE COURT: -- like he searches the car. He
3 doesn't know what she may have.

4 MS. KEENE: Correct.

5 THE COURT: And I see your inference that if
6 it's the gasoline, it might affect me if in fact there
7 is something significant to the gasoline.

8 MS. KEENE: I think upon them further
9 talking to him, it becomes very clear that what he's
10 doing is invoking his Fourth Amendment right not to have
11 a search of his car.

12 THE COURT: Is there a standing issue, do
13 you think?

14 MS. KEENE: No -- well, there's a standing
15 issue ultimately when they go get consent to search the
16 car. That's why I'm not arguing about whatever they
17 found in the car, because they go to Amanda and they get
18 her consent, that's fine.

19 THE COURT: So you have two issues; one, the
20 search of the car, two, discussion with him whether it's
21 okay to search the car when he says no?

22 MS. KEENE: Correct. What we're arguing
23 about is the discussion with him about searching the
24 car. The actual search of the car, they do it legally
25 and they do it another way, so that's irrelevant, to

1 whatever they found in that car, with the pictures, et
2 cetera. It's the fact they're talking to him and really
3 all the discussion of him going, "No, no," and then why
4 do you have to go into the reasoning of why you're
5 invoking your Fourth Amendment right? Why are you going
6 to do that?

7 Under the constitution you have a right to
8 remain silent, you have a right to be free of searches.
9 If a police officer can come and say, "I want to come
10 into your house," you say, "No," and they go, "Why?"
11 "What?" And you have to explain why? And then that
12 gets to be put in front of a jury? Really? What kind
13 of constitutional right is it if I'm getting
14 penalized --

15 THE COURT: Let me ask you a question. If
16 you walk up and knock on a door and say, "Hi, your
17 neighbors think you're running a drug lab in your house.
18 Will you talk to me about it," and they say no and slam
19 the door in your face, you think that's admissible, if
20 they just go knock on your door and ask that question,
21 if in fact later you're charged with running a drug lab
22 in your house?

23 MS. KEENE: I think, yes, that's admissible,
24 the way you phrased the question. I think that if they
25 came in and said, "Can we look inside your house," and

1 they said no, I don't think that that's admissible.

2 THE COURT: What would be the difference of
3 saying, "I'm not going to talk to you" versus "I'm not
4 going to let you look in my garage to see if there's a
5 drug lab to put the little old ladies at peace across
6 the street"?

7 MS. KEENE: I guess it depends exactly on
8 what is said and what the circumstances are.

9 THE COURT: Okay.

10 MS. KEENE: But certainly if you're in
11 custody, obviously any time you say, "I don't want to
12 talk," it's over. But if they just want to come up and
13 say, "I want to talk about the drug lab," I don't why
14 that wouldn't be admissible, that you said, "I don't
15 want to talk to you about no drug lab." That's their
16 words. But if they said, "We want to come search your
17 house. We don't have a warrant. We don't got no
18 probable cause. Will you let us," and you say no --

19 THE COURT: It's still words.

20 MS. KEENE: It's an invocation of your
21 Fourth Amendment right not to be searched.

22 THE COURT: All right.

23 MS. KEENE: And they don't get to then use
24 that, because what happens is they put that in front of
25 the jury, just exactly like the Court said, there's an

1 inference of "why", because we're all humans. Human
2 beings say, "Thomas, why won't you let us see your
3 body?" "Why won't you let us in the car?" "That's
4 funny, the two things you said no to." They're going to
5 use that as evidence and the jury is going to take it as
6 evidence.

7 So we would argue under constitutional
8 grounds, as well as under 403, and just good old
9 evidentiary grounds, of those issues being misconstrued
10 and taken as guilt even though he --

11 THE COURT: So your legal position that
12 whether you have a Fifth Amendment right concerning
13 conversations, whether you're in custody, whether you're
14 detained, is one issue, that a Fourth Amendment issue is
15 separate and distinct from a Fifth and Sixth Amendment
16 issue?

17 MS. KEENE: Absolutely.

18 THE COURT: That the right to a
19 reasonable -- to be free from unreasonable searches and
20 seizures...

21 MS. KEENE: Is for all citizens regardless
22 if they're in custody or not.

23 THE COURT: And I understand that argument
24 and I understand it when it says, you know, "Put your
25 hands on the wall. We're cutting off your shirt even

1 though you said no," as opposed to the discussion of
2 "why you don't want your shirt cut off," had they forced
3 the shirt. I see those are different issues. Whether
4 there's the consent or not, I understand.

5 Just like the Fifth Amendment, if the
6 officer continues the conversation, well, maybe they can
7 still push it but the jury doesn't hear about it. But,
8 you know, if you knock on the door, "Your neighbor says
9 there's a lab. Will you talk to us," and they say no
10 and slam the door in your face when it's not custodial,
11 so I see the custodial issue still intertwines even with
12 the Fourth Amendment issue.

13 MS. KEENE: I do. Judge, I do, too. And if
14 he was in custody, it would intertwine in a big way.

15 THE COURT: Right.

16 MS. KEENE: Because he could actually argue
17 then that he was actually also saying a right to remain
18 silent on that issue and y'all kept talking to him about
19 it.

20 THE COURT: Right.

21 MS. KEENE: If it is construed, when you
22 look at the way he was detained, that he actually was in
23 custody for purposes of this conversation, then it's
24 also a good Fifth Amendment argument. But I'm saying
25 just forget that --

1 THE COURT: Right.

2 MS. KEENE: -- let's forget that and say,
3 you know what, it was a voluntary him-coming-down-there,
4 when he says no, it means no. And you don't get to put
5 in front of the jury that he said no and it took
6 20 minutes to convince him and all that conversation
7 that took place. When he says no and the cop says, but
8 doesn't do it, "I honor that," you honor that and you
9 don't get to basically convince him after 20 minutes of
10 conversation and take the pictures and put it in front
11 of the jury, all of that, because he said no. And it
12 wasn't -- both of those, he wasn't waffling.

13 Particularly on the body, he was like "no".

14 THE COURT: Okay.

15 MS. KEENE: It's an interesting issue for
16 you, Judge.

17 THE COURT: I understand your position.

18 MS. KEENE: Okay. That's our argument.

19 THE COURT: All right. State may respond.

20 STATE'S CLOSING ARGUMENT

21 MR. ROUSSEAU: Well, first of all, he was
22 not in custody. It's well-settled law that if he
23 voluntarily accompanied police to a police station does
24 not constitute custody. Just like sitting down and
25 talking to your probation officer, you may be required

1 to be there but you're not in custody. This is
2 well-settled law. And there doesn't need to be, I
3 believe, much time wasted on was he in custody or not.
4 He voluntarily went down there.

5 All this talk about he wasn't allowed to
6 drive his own vehicle, we don't know he wasn't allowed
7 to drive his own vehicle. They asked him if he would
8 accompany them to the police department and he said yes.
9 That's it. That's all the conversation. That's all the
10 testimony we have on whether or not -- on how he got to
11 the police department. So the rest of this conversation
12 about could he have driven his car, was he allowed to
13 drive his car, that's simply a non-factor here, because
14 there's no evidence that it ever entered his own mind to
15 drive his own vehicle. They asked him to ride with them
16 and he went. It's as simple as that.

17 So question is was it voluntary, and it was
18 in fact voluntary. The interview speaks for itself. He
19 was overwhelmingly eager to cooperate. He even made
20 statements many times like, "Whatever, Officer,
21 absolutely." "You're doing your job." "I'm here to
22 help you." "Whatever you need, Officer." "I absolutely
23 understand why you're doing this." "Whatever I can do
24 to help." "I have nothing to hide." He was eager to
25 assist them in any way he could until it came to the

1 question of taking a picture of his body, and I'm
2 distinguishing that from his arms and his hands and that
3 sort of thing.

4 THE COURT: The part of his body that was
5 not already exposed to air.

6 MR. ROUSSEAU: Yes, sir. Yes, sir. His
7 torso.

8 So that and the vehicle. And regarding both
9 of those topics, Your Honor, every time he would say no,
10 beginning with the first, the first question from the
11 detective about taking a picture of his torso, he said,
12 "Not yet, no. Not yet." So according to Defense he
13 should have stopped there, boom, asked no more
14 questions. Well, it's not that simple. The detectives
15 are there to obtain evidence if they can without
16 violating his rights, if they can do so legally. And he
17 never gave an unqualified "no" to anything up to and
18 including the time where he has that one-line answer
19 that says "no," because it's in the middle of a
20 back-and-forth. I apologize, I don't have it. I'm not
21 turned to it, Your Honor. But -- just one moment.

22 (Pause in proceedings)

23 MR. ROUSSEAU: "How about that shirt off?
24 Would you let -- this is the top of page nine -- "Would
25 you let me take pictures?"

1 "No."

2 "You don't feel comfortable with that?"

3 "No, I don't."

4 "Okay."

5 "I would prefer to consent with someone over
6 that." And both detectives essentially, "You mean
7 consult?" He says -- Thomas says, "I completely
8 understand where you're coming from. It's just eczema.
9 I scratch a lot." So he throws out this explanation for
10 why he doesn't want to take off his shirt and be
11 photographed, and so they address the concern that he
12 raised over and over and over. He would throw out some
13 concern, from, one, "I have scratches that will make me
14 look guilty," that's one. Two, "I have eczema which is
15 embarrassing," to, three, "I have eczema which attacks
16 me like a swarm of angry bees the moment my skin is
17 exposed to air." The detectives, in response to him
18 throwing out these excuses, address those excuses to try
19 to put him at ease and, frankly, let's face it, to his
20 defeat his arguments against doing it. They want the
21 photographs if they can get them legally, and he
22 ultimately did consent.

23 A person is -- on the question of consent, a
24 person is most -- it's measured against a reasonableness
25 consent. And, you know, it's a person of reasonable

1 firmness. You look at police overreaching. You look at
2 threats. You look at the setting; was he restrained,
3 was he hounded, was he yelled at. None of this
4 occurred. In fact, you can see for yourself in the
5 interview, they were overly polite. They were extremely
6 kind to him. He was not deprived of water. He was
7 given the chance to go to the restroom. He was told
8 repeatedly he's not under arrest and "we can't do this
9 unless you tell us that we can." There's simply no room
10 in the law to say that the State does not get to use
11 evidence that's indicative of guilt because -- under
12 these circumstances. They essentially killed the man
13 with kindness. You cannot call this police
14 overreaching. You cannot call this browbeating. You
15 cannot call this custodial interrogation. And even if
16 it had been custodial interrogation, it was complied
17 with. The rules were complied with. 38.22 was fully
18 addressed. There's simply no basis to suppress any of
19 these items, Your Honor.

20 THE COURT: All right. The Court finds as a
21 matter of fact that on March 21st of 2011 that the
22 defendant in this cause, Thomas Olivas, was contacted by
23 officers of the Grapevine and Arlington Police
24 Department and requested to come to the Grapevine Police
25 Department for an interview, that he was transported

1 there, not in handcuffs and not under arrest at that, in
2 an unmarked vehicle, was taken to an interview room of
3 the Grapevine Police Department and thereafter was
4 involved in a multi-hour series of conversations with
5 intermittent breaks for intermittent purposes.

6 The interview, which concluded with the
7 words, "I'm done. I just want to call it an evening.
8 And if you need me, you know where to find me. I'm not
9 hiding from you. I'm giving you everything you need,
10 but I'm done. I hate to say it this time. I'm done,"
11 at which time the interview concludes and the Defendant
12 is allowed to leave the Grapevine Police Department.

13 The Court finds as a matter of fact,
14 concludes as a matter of law that the interview that
15 took place that's contained -- I keep saying four
16 corners -- within the four corners as relatively,
17 accurately transcribed State's Pretrial 1-A and 2-A and
18 contained within the video and words, audio and video,
19 of State's Pretrial 1 and 2 was not a custodial
20 interview within the meaning of Texas and U.S.
21 constitutional parameters nor within the parameters of
22 Article 38.22 of the Texas Code of Criminal Procedure.

23 However, as an appellate attorney might say,
24 assuming arguendo that it was, that on the face of the
25 interview shortly after its beginning, he was read his

1 38.22 warnings. It was recorded on the face of the
2 interview. And had it been a custodial interrogation,
3 at least for purposes of the statute, it was -- he
4 received the same warnings as would be proper and
5 appropriate for a custodial interview. So he was
6 advised of his constitutional rights.

7 And as a matter of law, if it's not a
8 custodial interview issue, raised by Ms. Keene properly,
9 which have very different impacts when you -- the issue
10 between invoking a constitutional right versus the
11 failure to waive a constitutional right that's
12 implemented as a matter of law. And once you're in
13 custody, it's not a matter of whether you choose to
14 invoke a right to remain silent, it's you must
15 affirmatively waive that right before the interview
16 takes place. So it's a timing issue. But I find as a
17 matter of fact, it was not a custodial interview.

18 I find as concerns State's Pretrial 5, 6, 7,
19 and 8 that -- well, first of all, 5, as concerns the
20 iPhone, unequivocal consent to search an iPhone. You
21 did everything but shove it in their hands. As far as
22 buccal swabs, I find free and voluntary consent to
23 provide buccal swabs and was quite impressed with his
24 discussion of DNA testing and how in the military you
25 give it for identification purposes in case you're a

1 combat casualty and there are pieces of you left and so
2 your family knows which casket has your body parts, and
3 how even the military says it cannot be used in any
4 criminal or non-identification purpose, showing a very
5 sophisticated knowledge on his part of the concept of
6 DNA testing and the privacy rights that are given to our
7 servicemen and women such that someone can't say, "I
8 want to see if he's the father," "he's a suspect," or
9 any other reason, because the military requires you to
10 give that for purposes of identification. I would note,
11 too, that based upon that, I am impressed and grateful
12 for the Defendant's service to his country before these
13 allegations, which is irrelevant to the legal decision
14 here today.

15 I find the search of the apartment as
16 evidenced by State's Pretrial 9 is a free and voluntary
17 consent based on the context of the discussions and the
18 actual execution of the documents.

19 I understand the concerns as to what I will
20 assume State's Pretrial 7 covers, which is photographs
21 and swabs of the body. And I understand and clearly
22 understood Ms. Keene's concern about he said no. But
23 the whole eczema issue was a nonresponsive comment the
24 Defendant made when the officer -- he says, "I need to
25 consult with someone," I can respect that, and then he

1 goes off into the eczema descriptions and goes on and on
2 about eczema and scratches and looks like a cat got him
3 and how you scratch and its involuntary and all these
4 reasons implying an embarrassment to show or be seen.
5 And when you look at the entire context of the
6 circumstances -- this conversation continues to go on
7 because he keeps throwing "eczema" out like he's almost
8 embarrassed that he's not cooperating with the photos
9 but he's embarrassed about the appearance of the eczema
10 and having to deal with the hereditary condition.

11 And when you look at the entire context of
12 the entire series of conversations, he is not in
13 custody. I'm not aware of a rule that says whether you
14 consent or aren't sure if you want to consent. The
15 bottom line is the consent that allowed the photos to be
16 taken and what was its context, and I find that to be a
17 free and voluntary consent. Whether that's what's
18 governed in writing by 7 or simply the conversations and
19 statements he makes in the manner and means in which he
20 displayed himself and cooperated with the photography.
21 I believe as a matter of fact that his position was,
22 and, quite frankly, as a matter of trial strategy still
23 is, I have nothing to hide and here's these pictures but
24 I don't want my medical condition misconstrued. And,
25 quite frankly, from the face of the record, scratches

1 due to eczema are much preferable to scratches without
2 explanation. And the context shows an attempt to
3 cooperate and a free and voluntary consent to those
4 ultimate photographs, which I assume are contained
5 within and observed in 10 through 23, inclusive, but
6 most specifically as to those that show bare skin on the
7 chest or torso where a T-shirt would normally cover. I
8 don't have the specific numbers. It's clear that he was
9 unequivocal and unhesitating to show other injuries,
10 including scratch injuries that were not covered by the
11 chest, in fact, gave explanations of how they occurred.

12 I find as a matter of fact, conclude as a
13 matter of law that each and every exhibit offered in
14 this hearing today, be it the visual display of the
15 interview, the oral interview, the photographs, the
16 iPhone, the clothing collected, and all testing done
17 thereon, were the direct result of the Defendant's
18 presence at the Grapevine Police Department on the date
19 of this interview and had he not been there, these items
20 would not have been obtained by consent or otherwise.
21 And if he were in custodial custody, I still find that
22 the consent was freely and voluntarily given, because
23 there is no rule that says you can't get a consent to
24 search from a person who's in jail, as long as it's
25 freely and voluntarily provided.

1 As far as the specifics, in all fairness,
2 I'm not sure this hearing is exactly the time and place
3 to go in -- every little statement made during the
4 course of all these interviews or the things that out of
5 403 or other issues may or may not need to be trimmed
6 because the context might be misunderstood, I'm not
7 going to make a ruling on that. I'm making a
8 constitutional and statutory ruling on their
9 admissibility.

10 But, Joetta, just like the situation, you
11 come to the door and "The little old lady said you have
12 a drug lab in your garage. Do you mind if we look to
13 calm their 80-year-old fear," and you say no, you have
14 a right to say no, but I'm not sure you'd have a right
15 to have that same "no" barred. But I'd be willing to
16 look at the issues on the discussion of the consent and
17 the what, and there might be pieces that maybe under 403
18 might be more confusing. I'm not saying that clearly at
19 this time because I don't have an objection before me on
20 that basis.

21 MS. KEENE: Well, I did object on 403.

22 THE COURT: Well, but it's not line-itemed
23 and I can't shotgun a 403 to everything in those papers.
24 You'll have to be more specific.

25 MR. ROUSSEAU: Your Honor, there was a

1 portion in there we didn't really discuss. The
2 detective asked, "Have you ever been arrested before,"
3 and there's a conversation about that. We will
4 obviously be deleting that before --

5 THE COURT: There's discussions about when
6 he was in the service, and I mixed my interviews up of
7 what was a post-arrest discussion versus the pre-arrest
8 discussion on that he was getting out of the service and
9 he didn't care and everything was dropped there. There
10 are issues throughout that may be on independent legal
11 basis to those addressed today under 38.22, 38.23,
12 Fourth Amendment, Fifth Amendment, Sixth Amendment, U.S.
13 Constitution, Article 1, Section 9, Section 10, which is
14 the legal basis of everything before me, as I
15 understand.

16 Is that correct, Ms. Keene?

17 MS. KEENE: That is, Judge. That was
18 beautiful. I have one question for you.

19 THE COURT: Hold on. Those basis, the
20 motion to suppress as a matter of law is overruled as to
21 the matters I have directly addressed in this record.
22 And at the time evidence is brought to court,
23 biologicals, DNA swabs, things other than the photos
24 that are in evidence today, if there is anything that
25 either side believes is covered by this motion that was

1 collected as a direct result of these consents,
2 independent of the auto issue where the owner gave an
3 independent consent, which would be addressed
4 separately, if before they're offered, as long as
5 they're identified for the record outside the jury's
6 presence that these are issues that -- "we are in
7 agreement or disagreement" -- were covered by Court's
8 prior ruling. And I'll tell you, "Yes, it was and the
9 ruling stands and is a running objection," or "No. I
10 didn't have a chance to address that." Or the other
11 side can say, "No. We think this is independent of a
12 prior ruling of the Court." But I will give you a
13 record to make sure there's no piece of evidence that
14 slips through this trial. Because y'all had the
15 professionalism and courtesy to the court reporter for
16 storage and other reasons not to bring every little
17 possible item in here today, I will make sure you have a
18 record, as the items are marked for trial on the merits,
19 as to whether this motion covered it or not, outside the
20 jury's presence.

21 So now you may...

22 MS. KEENE: How do you want us to address
23 the 403s? You said you wanted us to line-item, like
24 submit these sections?

25 THE COURT: What I think probably you need

1 to do on the 403s, I'd get a clean copy of the motion,
2 I'd get together and if you're in agreement with the
3 things, like "have you ever been in trouble before,"
4 other events involving third parties, of throwing
5 phones, of breaking things, stuff -- if it's something
6 that's motive, then it might come in and I can rule.
7 Since I don't know the big picture that the trial
8 lawyers on both sides know, of legal theories, of
9 defense or prosecution -- I can sense through all these
10 interviews there are two women and two babies and
11 neither would probably be happy with the other. There
12 could be other events that might directly relate to a
13 state of mind of the deceased or the accused that might
14 be admissible. There might be things that are just
15 things that happened that the officer wants to pursue to
16 decide is this a person of interest or a suspect.
17 Anything y'all agree to remove, take it out. Anything
18 you can't agree to remove, you can mark on the
19 transcripts and say here's what our objection is and
20 why, and you'll have a clean record without having to
21 play the tape, and I can address that prior to trial at
22 a mutually convenient time.

23 MS. KEENE: Including the "no" on the
24 consent?

25 THE COURT: Well, on the consent, yeah. The

1 "no" on the consent, my opinion right now is that's like
2 "can we come in your house" and you say no. I'm willing
3 to reconsider that based on law that addresses a
4 noncustodial refusal to cooperate, where someone walks
5 up to you on the street and says, "Hey, buddy, will you
6 talk to us? We'd really like to clear this up," and you
7 say no. The time and place and circumstances are very
8 specific, as to whether that's just a fact that you said
9 no because you're an old fart -- pardon me -- or you
10 don't understand or because you're trying to obstruct
11 justice. There are all these different rules and
12 circumstances that are sometimes admissible and
13 sometimes it's not, and I would like to look at specific
14 cases before I rule on whether that comes out.

15 MS. KEENE: Okay.

16 THE COURT: But the general conversation is
17 admitted. If there are certain particular parts -- I
18 think if it's not custodial, it's just the conversation.
19 But the difference between allegedly invoking a Fourth
20 Amendment right and being punished for it versus
21 refusing to waive it and being punished for it, the
22 refusing to waive is crystal clear. The invoking part
23 is not as crystal clear if you just say, "I don't want
24 to talk to you because I have a Fifth Amendment right,"
25 and if you throw that out in a conversation, it's not

1 insulated versus if you say, "I don't want to talk,"
2 after you're advised of that right.

3 And having said that, even if this is a
4 noncustodial conversation, there is the additional legal
5 issue both sides can look at, that they warned him of
6 his rights whether they had to or not and if you warn
7 someone of their rights and then they say, "Well, I
8 don't want to talk" or "I want to lawyer up," or
9 anything else, can it be used against them even if you
10 didn't have to warn them of their rights after you tell
11 them something and then is it a lie if it wasn't --
12 didn't apply.

13 This is a little gray and so on those
14 specific line-item details, if you will, and deletions,
15 I'd want to look at a little more law before I make
16 those kind of rulings, because this is kind of a hybrid
17 record.

18 All right. Anything else on that?

19 MS. KEENE: There's nothing else from us,
20 Judge.

21 MR. ROUSSEAU: No, Your Honor.

22 THE COURT: All right. Off the record.

23 (Discussion off the record)

24 THE COURT: On the record, real quick.

25 The State indicates they intend to present

1 their motion on discovery of defense experts. So y'all
2 have until tomorrow morning to decide for in-house use
3 only or testimonial, and you can make your decision and
4 let me know in the morning.

5 We'll be in recess until tomorrow at 9:00
6 o'clock.

7 (Pretrial Hearing concluded at 1:45 p.m.)

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1 COURT REPORTER'S CERTIFICATE

2 THE STATE OF TEXAS)

3 COUNTY OF TARRANT)

4 I, Karen B. Martinez, Official Court Reporter in and
5 for the 372nd District Court of Tarrant County, State of
6 Texas, do hereby certify that the above and foregoing
7 contains a true and correct transcription of all
8 portions of evidence and other proceedings requested in
9 writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-styled and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record of the
14 proceedings truly and correctly reflects the exhibits,
15 if any, admitted by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is **located at the**
18 **end of Volume 21.**

19 WITNESS MY OFFICIAL HAND this the 30th day of March,
20 2015.

21 /s/ Karen B. Martinez

22 Karen B. Martinez, Texas CSR 6735
23 Expiration Date: 12/31/2015
24 Official Court Reporter
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